

SCHEDULES

SCHEDULE 16

Articles 37 and 53

Protective Provisions

PART 1

Protection for Network Rail Infrastructure Limited

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” have corresponding meanings;

“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 his powers under section 8 (licences) of the Railways Act 1993⁽¹⁾;

“Network Rail” means Network Rail Infrastructure Limited 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 (meaning of “subsidiary” etc.) 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—

- (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 sections 216 and 274 of, and paragraph 4 of Schedule 17 to, the Transport Act 2000 (c. 38), section 16(5) of, and Schedule 2 to, the Railways and Transport Safety Act 2003 (c. 20), sections 1(1) and 59(6) of, and paragraph 3 of Schedule 1 and Part 1 of Schedule 13 to, the Railways Act 2005 (c. 14) and S.I. 2015/1682.

(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 or approval in respect of any matter, that consent 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 pursuant to this Order.

4.—(1) The undertaker must not exercise the powers conferred by articles 24 (compulsory acquisition of land) or 27 (compulsory acquisition of rights or imposition of covenants) 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(3) (extinguishment of rights of electronic communications code network operators: preliminary notices) of the 1990 Act, as applied by article 37 (statutory undertakers and electronic communications code network operators), 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 of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent 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 his disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his 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 his approval or disapproval, the engineer is 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

(3) Section 272 was amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act 2003 (c. 21).

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 with all reasonable dispatch 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 his 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 the same (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 must be carried out at the expense of the undertaker in either case with all reasonable dispatch 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 the engineer's reasonable satisfaction.

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

- (a) with all reasonable dispatch 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 thereon 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 must, notwithstanding 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 Part of 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.

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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 railway 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, notwithstanding any such approval of a specified work under paragraph 5(3), 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 must 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, signalmen, watchmen 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 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 thereafter 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 pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-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 must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised railway comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by 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) forthwith 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 pursuant to sub-paragraphs (5) or (6)—

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- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to 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) applies 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 deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 56 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

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 by reason of—

- (a) the construction or maintenance of a specified work or the failure thereof; or
- (b) 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) are to 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 pursuant to 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 (licences) 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 pursuant to 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 there must not be taken into account 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 lands plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (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 if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 10 (consent to transfer benefit of order) of this Order 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 and documents submitted to and certified by the Secretary of State in accordance with article 55 (documents to

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be certified) are certified by the Secretary of State, provide a set of those plans and documents to Network Rail in the form of a computer disc with read only memory.

PART 2

Protection for Electricity, Gas, Water, Petroleum and Sewerage Undertakers.

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

23. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(4)), belonging to or maintained by that undertaker for the purposes of electricity supply;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(5) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(6); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(7) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104(8) (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act,

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

and includes 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

“utility undertaker” means—

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- (4) 1989 c. 29. The definition of “electrical plant” in section 64 of the Act was amended by paragraph 38 of Schedule 6 to the Utilities Act 2000 (c. 27).
 - (5) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).
 - (6) 1991 c. 56.
 - (7) Section 102(4) was amended by sections 56 and 96(1)(c) to (e) of, and paragraphs 2 and 90 of Schedule 7 to, the Water Act 2014 (c. 21), and section 96(1) of the Water Act 2003 (c. 37).
 - (8) 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)

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989⁽⁹⁾;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

On street apparatus

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

Acquisition of land

25. 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.

Removal of apparatus

26.—(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, that apparatus must not be removed under this Part of this Schedule, and any right of a utility 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 utility undertaker in question.

(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 utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker 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 utility undertaker in question 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 is to be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 56, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3),

(9) 1989 c. 29. A new section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27) and was further amended by sections 136 and 145(5) to (7) of and Schedules 19 and 23(1) to the Energy Act 2004 (c. 20), S.I. 2012/2400 and S.I. 2011/2704. There are other amendments to section 6 but none are relevant to this Order.

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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 utility undertaker in question that the undertaker 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 utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(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

27.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker 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 utility undertaker in question or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

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

- (a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation of the railway which forms or is to form part of Network Rail's network and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or the undertaker or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) 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 utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

28.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 26(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 26(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

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

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker 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 23 to 27 apply as if the removal of the apparatus had been required by the undertaker under paragraph 26(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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

29.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 26(2).

(2) The value of any apparatus removed under the provisions of this Part 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,

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 56 (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 utility undertaker in question 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 must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

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(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker 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 utility undertaker 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.

Indemnity

30.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 26(2), 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 a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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 a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker 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 which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

PART 3

Protection for Operators of Electronic Communications Code Networks

32.—(1) The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part of this Schedule—

“electronic communications apparatus” has the same meaning as in the electronic communications code⁽¹⁰⁾;

“the electronic communications code” has the same meaning as in section 106(1) (application of the electronic communications code) of the 2003 Act⁽¹¹⁾;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure 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

⁽¹⁰⁾ See paragraph 5 of Schedule 3A (the electronic communications code) to the Communications Act 2003 (c. 21). Schedule 3A was inserted by Schedule 1 to the Digital Economy Act 2017 (c. 30).

⁽¹¹⁾ Section 106 was amended by section 4 of the Digital Economy Act 2017.

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- (b) an electronic communications network which the undertaker 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;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

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

33. The exercise of the powers conferred by article 37 (statutory undertakers and electronic communications code network operators) is subject to Part 10 of the electronic communications code.

34.—(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 of the works comprised in 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 those works) 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 must—

- (a) make reasonable compensation to an operator for loss sustained by it; and
- (b) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator 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, has the sole conduct of any settlement or compromise 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 must be referred to and settled by arbitration under article 56 (arbitration).

35. 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 damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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

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PART 4

Protection for the Environment Agency

37.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“emergency” means a situation which—

- (a) is unexpected, in that there is little or no warning, or aspects of the event could not have reasonably been predicted in advance;
- (b) is a serious event presenting a risk of harm or damage to people, property or the environment; and
- (c) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation; and

“relevant watercourse” has the same meaning as in article (powers in relation to relevant watercourses).

38.—(1) Where in the exercise of the powers conferred by this Order, the undertaker proposes to interfere with or obstruct access by the Agency to a relevant watercourse, it must give the Agency 56 days’ written notice of that requirement.

(2) Except in cases of emergency where the undertaker interferes with or obstructs access by the Agency to a relevant watercourse and it is not possible for the undertaker to give the Agency the notice required under sub-paragraph (1), a suitable alternative access must be provided prior to and for the duration of any such interference.

39. If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest of the Agency in any land or proposes to interfere with, or remove, any of the Agency’s apparatus it must give the Agency 56 days’ written notice before any such interest is acquired or any apparatus is interfered with or removed.

40. The undertaker must indemnify the Agency in respect of all costs, charges and expenses which it may reasonably incur or which it may sustain in the examination of plans or other matters under this Part of this Schedule.

41. Any dispute arising between the undertaker and the Agency under this Part of this Schedule is to be determined by arbitration in accordance with article 56 (arbitration).

PART 5

Protection for First Corporate Shipping Limited

42. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and BPC.

43. In this Part—

“access works” means works—

- (a) on, over or under or otherwise affecting a private street or any public right of way on BPC’s property, including the kerbs, splitter islands, footways, verges and carriageway of such street and any road markings, signing, signals, and other street furniture;

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- (b) to alter, modify, improve, create or provide any means of access (whether temporary or otherwise) on or across BPC's property or to or from any private street or any other part of BPC's property or to or from any dock public road;
- (c) to alter the layout of any private street or any public right of way on BPC's property; and
- (d) to position or install plant or equipment on or over any private street or any public right of way on BPC's property,

and includes, without limitation on the scope of the foregoing, any works under article 13 (street works and power to alter layout etc., of streets) or article 17 (access to works) in respect of or affecting any private street or any public right of way on BPC's property;

“ancillary works” means embankments, earthworks, retaining structures or works, planting, landscaping or other mitigation, fencing and all other works falling within the descriptions of the further associated development set out in paragraphs (a) to (x) (inclusive) of Schedule 1;

“BPC” means First Corporate Shipping Limited (registered company number 02542406), trading as The Bristol Port Company, being the statutory harbour authority and competent harbour authority for the Port;

“BPC's apparatus” means all and any gas, oil and water pipes, water tanks, cisterns, drains and drainage works, sewers, pumps, electric and communication wires, cables and plant, ducts, conduits, governors, transformers, meters and any other service media, surface water interceptors (and whether in all cases for drainage, gas, oil water, electricity, telephone, television, data and information transmission or any other service) on BPC's property;

“BPC's property” means the whole and each of every part of all the leasehold and freehold land and rights and the benefit of all covenants, owned by or vested in BPC at Avonmouth, Chittening and Portbury—

- (a) upon, across, under, over or in respect of or affecting which any powers conferred by this Order may be exercised; or
- (b) upon, across, under or over which there is situated anything over or in respect of which any such powers may be exercised,

and includes, without limitation on the scope of the foregoing, the Port's railway and any private street but does not include the Court House Farm terminable access;

“BPC's representative” means the person appointed by BPC from time to time to be its representative for the purposes of this Order;

“certified documents” means any and all of the plans and documents certified by the Secretary of State for the purpose of this Order;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“construction access rights” means any and all powers conferred on the undertaker by this Order to exercise temporary powers of access over any land with or without vehicles, plant and equipment including, without limitation on the scope of the foregoing, any ancillary powers to remove buildings and vegetation from that land and to construct works for the purpose of providing a means of access;

“Court House Farm easement” means a Deed of Grant of Easement dated 4 September 2017 made between Network Rail and First Corporate Shipping Limited t/a The Bristol Port Company;

“Court House Farm terminable access” means the existing crossing at grade over the disused Portishead Branch Line which is described in the Court House Farm easement;

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“dock public road” means each of the streets known as Marsh Lane, Royal Portbury Dock Road (including the roundabout at its junction with Portbury Way and Gordano Way), Redland Avenue, Gordano Way, Garonor Way and Portbury Way to the extent that it is maintainable highway;

“drainage works” means works—

- (a) to create, alter or remove any culvert or other crossing over, under or affecting any watercourse or drainage ditch on, over or under BPC’s property or which drains water to or from BPC’s property; and
- (b) to make any opening or connection into any watercourse belonging to BPC or to lay down, take up or alter any pipes for that purpose;

“environmental protection works” means measures reasonably required to be carried out on or in respect of Work No. 18 to protect the scrub environment and water bodies established and managed by BPC;

“highway access land” means any and all of parcels 5/30, 5/61, 5/62, 5/65 and 5/70;

“maintainable highway” has the same meaning as in section 86(1) (highway authorities, highways and related matters) of the 1991 Act;

“Marsh Lane track” means the private street referred to in Schedule 3 (streets subject to street works) and therein described as Access Road to the M5 Avonmouth Bridge east of Marsh Lane, Easton-in-Gordano;

“Marsh Lane track land” means any and all of parcels 5/25, 5/95, 5/100, 5/105, 5/106, 5/112 and 5/113 and that part of parcel 5/28 which lies to the east of an imaginary line projected in a northerly direction across the disused railway line at 126 miles 78 chains and includes the Marsh Lane track;

“plans” includes sections, elevations, designs and design data, drawings, calculations, specifications, programmes, method statements, assessments of risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any work;

“Port” means the port and harbour of Bristol;

“Port’s railway” means the railway owned by BPC leading from Portbury Junction, Pill to the Royal Portbury Dock;

“powers of temporary possession” means the powers conferred by article 33 (temporary use of land for carrying out the authorised development);

“preparatory activities” means ecological mitigation works, archaeological investigations, boreholes, intrusive surveys, environmental surveys and monitoring, other investigations for the purpose of assessing ground conditions or the receipt and erection of construction plant and equipment, utility diversions or ground clearance works but excluding any such activities carried out under article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC’s property;

“private street” means any street on BPC’s property which is not a maintainable highway;

“public path land” means any and all of parcels 5/27, 5/101, 5/102, 5/130, 5/131, 5/135 and 5/136;

“rail link land” means any and all of parcels 5/104, 5/107, 5/108, 5/165, 5/171, 6/25 and 6/55;

“railway rights land” means any and all of parcels 5/95, 5/100, 5/105, 5/122, 5/137, 5/140, 5/141, 6/10, 6/15, 6/20 6/55, 6/60 and 6/80;

“relevant works” means that part of Work 1C that is on the Port’s railway and Work Nos. 14, 14A, 14B, 15, 16, 16A, 16C, 18, 19 and 20;

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“specified work” means—

- (a) that part of Work No. 1C that is on the Port’s railway;
- (b) the whole of Work Nos. 14, 14A, 15, 16, 16A, 16C, 18, 19 and 20;
- (c) all access works and drainage works; and
- (d) so much of all other parts of the authorised development and of any works to be carried out under the powers conferred by article 33 as is situated upon, across, under, over or within 5 metres of BPC’s property, including all environmental mitigation and restoration measures;

(2) In this Part of this Schedule—

- (a) references to the undertaker include references to any person to or in which any or all of the benefit of the provisions of this Order and any related statutory powers are transferred or are vested pursuant to any provision of this Order and any person which may by virtue of any agreement made pursuant to article 11 (agreements with Network Rail) whether alone or jointly with another exercise any or all of the powers contained in this Order;
- (b) references to numbered parcels are to the parcels of land so numbered in the book of reference;
- (c) references to a requirement to consult include that consultation must take place in good faith and in a timely manner with the provision of all reasonably necessary information and so that the party concerned must act reasonably in taking into account the reasonable comments made by the other party in response; and
- (d) references to BPC’s consent, agreement or approval are to BPC’s prior consent, agreement or approval given in writing.

44. Nothing in this Order affects—

- (a) any right of BPC to use the Court House Farm terminable access; or
- (b) the provisions of the Court House Farm easement or any other agreement relating to the Court House Farm terminable access,

and accordingly the following provisions of this Part of this Schedule do not apply as regards the Court House Farm terminable access.

45. The undertaker must give written notice to BPC if any application is proposed to be made by the undertaker for the Secretary of State’s consent under article 10 (consent to transfer of benefit of order) 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.

46.—(1) No agreement made under article 11 (agreements with Network Rail) may authorise or permit the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of any powers and rights of Network Rail and the undertaker (as the case may be) under any BPC contract or affecting any of BPC’s property.

(2) In sub-paragraph (1), “BPC contract” means all and any contracts, licences, easements and other agreements, permissions and consents to which BPC is a party or of which it has the benefit.

Watercourses and drainage

47.—(1) No part of any impounded dock at the Port is included within the definition of “watercourse” for any purpose of this Order.

(2) The undertaker must not without BPC’s consent (such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions) create any new discharges for water into any watercourse belonging to or used by BPC.

(3) Without limitation on the scope of sub-paragraph (2), any consent given by BPC under this paragraph—

- (a) may be given subject to reasonable conditions as to the quantities of water permitted to be discharged and as to the duration of any use of the relevant watercourse by the undertaker; and
- (b) does not obviate the need for the undertaker to obtain any further consents required in relation to the activity concerned.

(4) In the exercise of any power under article 22 (discharge of water), the undertaker must not damage or interfere with the bed or banks of any watercourse in, on, over or under BPC’s property.

Surveys

48.—(1) The undertaker must not exercise the powers conferred by article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC’s property—

- (a) outside the Order limits except to the extent that BPC agrees for the purpose of carrying out non-intrusive surveys, investigations and monitoring only;
- (b) other than to the extent that the exercise of such powers is necessary in connection with carrying out the authorised development; and
- (c) other than by prior agreement with BPC on each and every occasion, such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions, and on at least 14 days’ notice.

(2) When requesting BPC’s agreement to access under sub-paragraph (1) the undertaker must provide to BPC full details of the property to which access is requested, the activities proposed (including risk assessments and method statements and intended duration of the activities), the identity of the persons who would undertake them and any apparatus that might be left on the affected property.

(3) BPC is, without limitation on the scope of sub-paragraph (1)(c)—

- (a) entitled to refuse access as requested by the undertaker on any occasion for operational reasons, in which case BPC must act reasonably and without delay in seeking to offer alternative arrangements; and
- (b) entitled as a condition of its agreement on any occasion to require the production of evidence of the existence of adequate insurance with insurers of repute, the proceeds of which will be available to cover all liability, costs, claims, expenses and demands which may arise as a result of that access.

(4) The undertaker must remove any equipment left on, over or under BPC’s property as soon as reasonably possible after completion of the relevant surveys and investigations.

(5) The undertaker must, at its own expense, deliver to BPC as soon as reasonably practicable after their production on a non-reliance basis copies in an electronic format of all survey and ground investigation reports carried out in respect of BPC’s property under the powers conferred by article 23 or the powers conferred by section 11(3) of the 1965 Act as applied by this Order, which reports

BPC may use and provide to others (on a non-reliance basis) free of cost in connection with works and operations at the Port.

Streets, access and public rights of way

49.—(1) The undertaker must not in carrying out any works or exercising the powers conferred by this Order cause pedestrian or vehicular access to or across any of BPC’s property (including access for cargo operations but excluding access over the Court House Farm terminable access) to be interfered with or obstructed, other than with the consent of BPC, not to be unreasonably withheld or delayed, or, if the carrying out of works or exercising the powers relate to a dock public road, unless the undertaker has first consulted with BPC.

(2) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under—

- (a) article 13(1) (street works and power to alter layout etc., of streets) in respect of or so as to affect the Marsh Lane track other than by prior agreement with BPC such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions;
- (b) article 13(1) in respect of or so as to affect any dock public road unless it has first consulted with BPC; or
- (c) article 13(2) in respect of or so as to affect any private street on any part of BPC’s property.

(3) With the exception of the locations specified in columns (1) and (2) of Schedule 7 (access to works) and shown on sheet 5 of the compounds, haul roads and access to works plan as AW5.1 (access from the highway known as Marsh Lane, Easton in Gordano, north of the disused Portishead Branch railway line) and AW5.3 (access from the highway known as Marsh Lane, Easton in Gordano, south of the disused Portishead Branch railway line) the undertaker must not pursuant to any powers in this Order carry out any works to create or improve any means of access affecting any private street or any public right of way on BPC’s property or any other part of BPC’s property or any dock public road.

(4) In carrying out any access works, the undertaker must not so far as reasonably practicable interfere with or obstruct the free, uninterrupted and safe use by other traffic of any street or interfere with street furniture, signage and lighting masts.

(5) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under article 15(1) (temporary stopping up of streets and public rights of way) in respect of—

- (a) the Marsh Lane track (except to the extent permitted by article 15(5)) or any other private street; or
- (b) Royal Portbury Dock Road without BPC’s consent, such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions.

(6) Despite any provision in this Order, the undertaker must not, except with the agreement of BPC, exercise any power under article 15 or article 46 (traffic regulation) to use or to authorise the use of any private street or any dock public road or any public right of way on BPC’s property as a temporary working site or as a parking place.

(7) The undertaker must exercise the power granted to it under paragraph (5) of article 15 to stop up public rights of way LA8/67/10 and LA/8/68/10 to the extent specified in column (3) of Part 2 of Schedule 5 (bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension), throughout the period of operation or use of the Lodway Farm construction compound to be constructed as Work No. 17 and the temporary construction compound located under the M5 Avonmouth Bridge.

(8) The undertaker must, before submitting any survey, proposed measures or strategy relating to the Marsh Lane track to the relevant planning authority for approval in accordance with requirement

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35 (requirement for written approval) of Schedule 2 (requirements), consult with BPC in relation to the content of all such surveys, measures and strategies.

(9) Despite paragraphs (1) and (2) of article 19 (construction and maintenance of new or altered streets)—

- (a) any street constructed under this Order on BPC's property; and
- (b) the altered or diverted part of any street altered or diverted under this Order on BPC's property

must be maintained by and at the expense of the relevant highway authority at all times from its completion.

(10) If the undertaker acquires, whether compulsorily or by agreement, any of BPC's property within the Order limits, or any right or interest in or over such property, which property is subject to a public right of way, from the date of the acquisition of the relevant land, right or interest or from the date of entry onto the land by the undertaker under section 11(1) (power of entry) of the 1965 Act, whichever is the earlier, any liability or responsibility of BPC to the relevant highway authority for or in respect of the maintenance of that public right of way is extinguished and that public right of way shall after that date instead be maintained by and at the expense of the relevant highway authority.

(11) Without limitation on the scope of any other provision in this Part if any damage to any public right of way on BPC's property is caused in the exercise of any powers under this Order or by the carrying out of, or in consequence of the construction of, any works under this Order, the undertaker must make good such damage and pay to BPC all reasonable expenses to which BPC may be put by reason of any such damage.

(12) The undertaker must not exercise any powers under article 13, article 15 or article 46 over or in respect of any part of BPC's property or any dock public road after completion of construction of the authorised development.

(13) Despite any other provision of this Order, no part of Work No. 16 or Work No. 18 (including the right of way to be constructed by the undertaker pursuant to article 16(3) and described in Part 2 of Schedule 6 (bridleways, cycle tracks and footpaths) as a bridleway between points B1 and B2 shown on Sheet 5 of the new highways plan) is or will become open for use by any person or a public right of way or other highway except with the agreement of BPC.

Acquisition and use of land

50.—(1) The undertaker must not exercise the powers conferred by section 271 (extinguishment of rights of statutory undertakers: preliminary notices) of the 1990 Act in relation to any rights of BPC over or in respect of the railway rights land or the highways access land; or any of BPC's apparatus.

(2) Despite any other provisions of this Order, if the undertaker acquires any interest in the railway rights land or the highways access land, whether compulsorily or by agreement, no rights of BPC over or in respect of the railway rights land or the highway access land so acquired must be extinguished.

(3) The undertaker must not exercise the powers conferred by—

- (a) article 24 (compulsory acquisition of land) or article 31 (acquisition of subsoil or airspace only) over or in respect of the public path land or any part of parcel 5/50 which is not part of the embankment supporting Marsh Lane;
- (b) article 27(1) (compulsory acquisition of rights or imposition of covenants) over or in respect of the rail link land or any parcels 5/75, 5/103 and 5/112;
- (c) article 27(2) over or in respect of any of BPC's property;
- (d) article 32 (rights under or over streets) over or in respect of any private street; or

(e) article 34 (temporary use of land for maintaining the authorised development) over or in respect of any of BPC's property,

unless the exercise of such powers is with the consent of BPC.

(4) Except to the extent BPC may agree, article 28(3) (private rights over land subject to compulsory acquisition or temporary possession), article 29 (power to override easements and other rights) and article 37 (statutory undertakers and electronic communications code network operators) is not to apply in relation to any interest, right or restriction, the benefit of which is vested in or enjoyed by BPC affecting the rail link land or the Marsh Lane track land.

Use of land and execution, maintenance and use of the authorised development

51.—(1) Despite any provision in this Order or anything shown on the land plan, the undertaker must not except with the agreement of BPC—

- (a) exercise any powers of temporary possession over or in respect of parcel 5/75 or (if and to the extent they form part of BPC's property) parcel 5/85 or parcel 5/86 unless BPC fails, within 14 days of a request by the undertaker, to make available for exercise by the undertaker in substitution for the exercise of the relevant powers temporary rights of access over other land which are sufficient (whether alone or in conjunction with the exercise by the undertaker of other powers under this Order) to enable the undertaker to gain access in connection with the construction of the authorised development, with such vehicles, plant and equipment as may be necessary, from access point AW5.3 shown on the compounds, haul roads and access to works plan to the accommodation bridge (and associated walls, embankments and structures) on land adjacent to parcel 05/86 and to the culvert, watercourse and head wall situated on land adjacent to parcel 05/85;
- (b) other than any construction access rights which may be authorised by or pursuant to the terms of this Order over the Marsh Lane track, the rail link land or parcel 05/75, or over bridleways and footpaths that are open to the public, exercise any construction access rights over BPC's property or otherwise use any part of BPC's property for the purpose of gaining access to any part of the authorised development or to any other land or in connection with the construction or maintenance of the authorised development; or
- (c) exercise any powers of temporary possession over or in respect of the Marsh Lane track land or the rail link land or parcels 5/103 and 5/170.

(2) Any exercise of powers of temporary possession by the undertaker in respect of the rail link land or the Marsh Lane track land which may be permitted pursuant to the terms of this Order is subject to, and in common with, the use of the rail link land and the Marsh Lane track land by BPC and by any other person acting with BPC's authority or which may have rights to use the rail link land and the Marsh Lane track land.

52.—(1) If required to do so by BPC (acting reasonably), the undertaker must at its cost and expense procure that surveys are carried out to a specification approved by BPC (acting reasonably) to show the condition of any land of which temporary possession is taken under article 33 (together with all associated structures) before the undertaker's use of it begins and after that use ends.

(2) The undertaker must promptly after receipt of reasonable demand by BPC and at the undertaker's cost and expense make good any and all damage and wear and tear caused to any part of BPC's property which is used by the undertaker in connection with the construction or maintenance of the authorised development where in BPC's reasonable opinion the rectification of such damage, wear or tear is necessary in the interests of safety or security.

(3) If required to do so by BPC (acting reasonably), the undertaker must permit BPC to inspect the execution of all works of rectification being carried out under this paragraph in order to ensure compliance by the undertaker with the requirements of this paragraph.

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53.—(1) The undertaker must present to BPC not less than three months before the intended date of commencing construction the draft programme for the execution of each part of the authorised development on BPC’s property.

(2) The undertaker must consult with BPC in relation to the draft programme and must present its final programme for the execution of the authorised development on BPC’s property to BPC not less than four weeks before the intended date of commencing construction.

(3) The undertaker must not enter on or take temporary possession of any part of BPC’s property unless it has served at least 14 days’ written notice on BPC of its intended entry onto that part.

(4) In this paragraph “intended date of commencing construction” means the first date on which the undertaker wishes to commence construction of any part of the authorised development on, under or over any part of BPC’s property, including carrying out any preparatory activities.

(5) In the exercise of any powers of temporary possession in respect of any part of BPC’s property and in the commencement and execution of the authorised development on BPC’s property the undertaker must—

- (a) proceed diligently with the works affecting each part of BPC’s property; and
- (b) notify BPC in writing of the completion of the relevant part of the authorised development affecting each part of BPC’s property within fourteen days of its completion.

(6) In the exercise of any powers of temporary possession in respect of any part of BPC’s property the undertaker must not—

- (a) except with the agreement of BPC, provide or authorise the provision of car parking or storage (for materials or other items) facilities on any part of BPC’s property other than within Work No. 16A;
- (b) demolish or remove any buildings; or
- (c) except as BPC agrees, construct or carry out on BPC’s property any works comprising fencing, any mitigation works, ground or rock stability, geotechnical or strengthening works other than works which are of a temporary nature.

(7) In addition to and without limitation on the scope of the undertaker’s other obligations under this Order (including those in article 33(4) and Schedule 2), before giving up possession of any part of BPC’s property in respect of which any powers of temporary possession have been exercised the undertaker must remove any works constructed in contravention of sub-paragraph (6) or paragraph 54.

Works

54. Despite any provision of this Order or anything shown on the certified documents except as BPC may agree—

- (a) no part of Work No. 14 or any ancillary works associated with Work No. 14 must be constructed or maintained on parcel 04/55; and
- (b) other than works of a temporary nature, no ancillary works associated with any relevant works or with Work No. 1A or Work No. 1B must be constructed or maintained upon, across, under or over BPC’s property of which only temporary possession is taken under this Order or over which the undertaker does not, under this Order, acquire rights authorising the retention of those ancillary works.

55.—(1) The undertaker must before commencing construction of any specified work supply to BPC proper and sufficient plans of that work for BPC’s approval and the specified work must not be commenced or executed except in accordance with such plans as have been approved in writing by BPC.

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(2) Subject to sub-paragraph (3), BPC's approval under sub-paragraph (1) must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions.

(3) BPC's approval to plans must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions—

- (a) in respect of all or any of Work No. 1C on BPC's property and Work No. 19, if and in so far as the proposed works comprise and, following design development, are broadly consistent with the works shown on drawings W1097B-ARP-DRG-ECV-000305, W1097B-ARP-DRG-ECV-000330 and W1097B-ARP-DRG-ECV-000331;
- (b) in respect of Work No. 18 if and in so far as the proposed works comprise and, following design development, are broadly consistent with the Bridleway Extension Under the Elevated M5 Plan, and
- (c) in respect of Work No. 16C, if and in so far as the proposed works comprise only work necessary to renew the level crossing in modern equivalent form.

(4) Where under sub-paragraph (2) or (3) BPC's approval to plans submitted by the undertaker under sub-paragraph (1) cannot be unreasonably withheld or delayed if by the end of the period of 28 days beginning with the date on which such plans have been supplied to BPC, BPC has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon BPC written notice requiring BPC to intimate approval or disapproval within a further period of 28 days beginning with the date upon which BPC receives written notice from the undertaker. If by expiry of the further period of 28 days BPC has not intimated approval or disapproval, BPC is deemed to have approved the plans as submitted.

(5) When signifying approval of plans submitted under sub-paragraph (1), BPC may specify any protective works (whether temporary or permanent) which in BPC's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of BPC's property or the continuation of safe and efficient operation of the Port (including the Port's railway) and such protective works as may be reasonably necessary for those purposes are to be constructed by BPC but at the expense of the undertaker, or if BPC so desires such protective works must be carried out by the undertaker at its own expense with all reasonable dispatch, and the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that the protective works have been completed to BPC's reasonable satisfaction.

(6) When signifying approval of plans submitted under sub-paragraph (1) in relation to Work No. 18, BPC may specify any environmental protection works which in BPC's reasonable opinion should be implemented before the commencement of, or during, the construction of Work No. 18 and such environmental protection works as may be reasonably necessary for those purposes are to be implemented by BPC but at the expense of the undertaker, or if BPC so desires such environmental protection works must be implemented by the undertaker at its own expense with all reasonable dispatch, and except to the extent BPC may agree the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that any and all relevant environmental protection works have been implemented to BPC's reasonable satisfaction.

56.—(1) Any specified work and any protective works (and any environmental protection works connected with Work No. 18) to be constructed or implemented by virtue of paragraph 55(5) or 55(6) must, when commenced, be constructed and implemented with all reasonable dispatch in accordance with the plans approved or deemed to have been approved under paragraph 55—

- (a) under BPC's supervision (where appropriate and if given) and to BPC's reasonable satisfaction;
- (b) in such manner as to cause as little damage as is possible to BPC's property; and

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- (c) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe and efficient operation of the Port (including use of the Port's railway or the traffic on it).

(2) If any damage to BPC's 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 must, regardless of any approval described in paragraph 55(1), make good such damage and pay to BPC all reasonable expenses to which BPC 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—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of BPC or its servants, contractors or agents; or
- (b) any liability on BPC with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

57. The undertaker must—

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

58. BPC must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by BPC under this Part 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.

59.—(1) If any permanent or temporary alterations or additions to BPC's property, or any protective works under paragraph 55(5), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any part of the authorised development that includes a specified work, in consequence of the construction of that specified work, such alterations and additions may be carried out by BPC and if BPC gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker must pay to BPC all costs reasonably and properly incurred in constructing 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 BPC in maintaining, working and, when necessary, renewing any such alterations or additions.

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

60. The undertaker must repay to BPC all fees, costs, charges and expenses reasonably and properly incurred by BPC—

- (a) in constructing any protective works under the provisions of paragraph 55(5) and in the implementing of any environmental protection works under the provisions of paragraph 55(6) including, in respect of any permanent protective works or permanent environmental protection works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of BPC's representative's approval of plans submitted by the undertaker and the supervision by BPC of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part;

- (c) in respect of the employment or procurement of the services of any persons whom it is reasonably necessary to appoint for inspecting, watching and lighting BPC's property (including the Port's railway) 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; and
- (d) in respect of any additional temporary lighting of BPC's property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work.

61. If at any time after the completion of a specified work BPC 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 or use of any of BPC's property (including the Port's railway) in connection with carrying on BPC's statutory undertaking, 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 to adversely affect the operation or use of such property in that connection.

62. Any additional expenses which BPC may reasonably incur in altering, reconstructing, working, or maintaining under any powers existing at the making of this Order any of BPC's property in connection with carrying on BPC's statutory undertaking by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction, working or maintenance has been given to the undertaker, are to be repaid by the undertaker to BPC.

63.—(1) The undertaker must pay to BPC all costs, charges, damages and expenses not otherwise provided for in this Part (but subject to article 41 (no double recovery)) which may be occasioned to or reasonably and properly incurred by BPC—

- (a) by reason of the construction, working, 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 BPC from and against all costs, 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 BPC on behalf of the undertaker or in accordance with plans approved by BPC or in accordance with any requirement of BPC's representative or under BPC's representative's supervision will not (if it was done without negligence on the part of BPC 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) BPC must give the undertaker reasonable notice of any such claim or demand made by a third party as soon as reasonably practicable after BPC becomes aware of it and must make no settlement or compromise of such a claim or demand in excess of £10,000 without the prior consent of the undertaker (such consent not to be unreasonably withheld or delayed).

64. BPC must, on receipt of a request from the undertaker, from time to time provide 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 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.

65. In the assessment of any sums payable to BPC under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by BPC 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 or increasing the sums so payable.

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BPC's apparatus

66. Despite any provision of this Order or anything shown on the land plan—
- (a) the undertaker must not acquire any of BPC's apparatus other than by agreement;
 - (b) any right of BPC to maintain and use any of BPC's apparatus in land must not be extinguished, suspended or interfered with other than with BPC's agreement; and
 - (c) the undertaker must not alter, divert, remove, replace, reposition, relocate or repair any of BPC's apparatus other than with BPC's consent (not to be unreasonably withheld or delayed in respect of any specified work).

The Port's railway

67. For the purpose of this Order—
- (a) no part of the Port's railway is, or will become by virtue of this Order or the execution of the authorised development, existing operational railway or operational railway; and
 - (b) no part of BPC's property or of any other land over which the Port's railway is located (whether or not that land is owned by BPC) is, or will become by virtue of this Order or the execution of the authorised development, operational railway land or currently operational railway land or form part of the railway authorised by this Order to which article 39 (operation and use of railways) applies.

Trees and other vegetation

68. Despite any provision in this Order and anything shown on the certified documents, in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development the undertaker must not—
- (a) plant new or replacement trees, hedges, hedgerows, shrubs or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed; or
 - (b) remove, cut back, fell or lop, prune or reduce in any way any other hedge, tree, shrub or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed.

General

69. The undertaker must in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development secure compliance with and implementation of all and any applicable conditions attached to any relevant consent, agreement or approval given by BPC for the purpose of this Part.

70. Article 49 (procedure in relation to further approvals, etc) will not apply in relation to any consent, agreement or approval from BPC required under this Order.

PART 6

Protection for Exolum Pipeline System Ltd

71. The provisions of this Part have effect for the protection of the Exolum undertaker referred to in this Part unless otherwise agreed in writing between the undertaker and the Exolum undertaker.

72. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the Exolum undertaker to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means the pipeline, or any part of it, belonging to or maintained by the Exolum undertaker, which is within the Order limits, and includes any structure in which that apparatus is or is to be lodged or which gives or will give access to apparatus;

“Exolum undertaker” means Exolum Pipeline System Ltd (registered company number 09497223) or any successor in title to the Exolum undertaker in respect of the apparatus;

“functions” includes powers and duties; and

“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.

73. Despite any provision of this Order or anything shown on the land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

74.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which the apparatus is placed, that apparatus must not be removed under this Part and any right of the Exolum 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 Exolum undertaker.

(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 Exolum undertaker written notice of that requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed in the land referred to in sub-paragraph (2), the Exolum undertaker, 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 other land in which the alternative apparatus is to be constructed.

(4) The Exolum undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 56 (arbitration), and after the grant to the Exolum undertaker of any such facilities and rights as are referred to in sub-paragraph (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.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the Exolum undertaker that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the Exolum undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the Exolum undertaker.

(6) Nothing in sub-paragraph (5) 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.

75.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 74(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under that sub-paragraph, the undertaker must submit to the Exolum undertaker a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the Exolum undertaker for the alteration or otherwise

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for the protection of the apparatus, or for securing access to it, and the Exolum undertaker is entitled to watch and inspect the execution of those works.

(3) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of the apparatus or (wherever situated) will impose any load directly upon the apparatus or involve embankment works within 15 metres of the apparatus, the information to be submitted to the Exolum undertaker under paragraph 75(1) shall be submitted not less than 35 days before the works are started and shall include a method statement describing—

- (a) the exact position of the works;
- (b) the level at which the works are to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of the apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to the apparatus,

to permit the Exolum undertaker to assess whether any protective works or monitoring of adjoining activities or works are necessary, acting reasonably.

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

(5) If the Exolum undertaker in accordance with sub-paragraph (4) 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, paragraph 74 applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph (2) of that paragraph.

(6) 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the Exolum undertaker notice as soon as is reasonably practicable and a plan, section and description of the works referred to in sub-paragraph (1) as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) and sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(8) Where, in the reasonable opinion of the Exolum undertaker or the undertaker, anything done in the exercise of the powers conferred by this Order might interfere with the cathodic protection forming part of apparatus or any apparatus might interfere with the proposed or existing cathodic protection forming part of the undertaker's works, the Exolum undertaker and the undertaker must co-operate in carrying out any tests which they consider reasonably necessary for ascertaining the nature and extent of such interference, and measures reasonably necessary for providing or preserving such cathodic protection.

76.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the Exolum undertaker the proper and reasonable expenses reasonably incurred by the Exolum undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus including those expenses incurred through stopping and restoring supply to the apparatus.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

77.—(1) 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, 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 56 (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 Exolum undertaker by virtue of paragraph 76(1) is to be reduced by the amount of that excess.

(2) For the purposes of sub-paragraph (1), the extension of the apparatus to a length greater than the length of the existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus.

(3) An amount which apart from this sub-paragraph would be payable to the Exolum undertaker in respect of works by virtue of paragraph 76(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 Exolum undertaker 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.

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

PART 7

For the protection of Western Power Distribution Limited (South West) Plc

Application

79. For the protection of Western Power Distribution Limited (South West) plc as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Western Power Distribution Limited (South West) plc.

Interpretation

80. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner not less efficient than previously;

“alternative rights” means all and any necessary legal easements, consents, or permissions required by WPD in order to permit or authorise a diversion;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989⁽¹²⁾, belonging to or maintained by WPD;

“diversion” means an alteration to the WPD network in order to enable or facilitate the authorised development;

(12) 1989 c. 29.

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“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;

“plan” or “plans” includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus;

“WPD” means Western Power Distribution (South West) plc (company number 02366894) whose registered office is at Avonbank, Feeder Road, Bristol BS2 0TB;

“WPD network” means WPD’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 (licences authorising supply, etc.) of the Electricity Act 1989; and

for the avoidance of doubt, all other terms as defined in article 2 (interpretation) of this Order.

Precedence of 1991 Act in respect of apparatus in streets

81. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and WPD are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

No acquisition or extinguishment except by agreement

82. 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.

Removal of apparatus

83.—(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 WPD’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation and access to it has been provided if necessary to the reasonable satisfaction of WPD in accordance with sub-paragraphs (2) to (11).

(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 WPD written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order WPD reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (2)(a), (b) and (c), afford to WPD the necessary facilities and rights for the construction of alternative apparatus in other land owned or controlled by the undertaker and subsequently for the maintenance of that apparatus—

- (a) if, for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land, and alternative apparatus or any part of such alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus, then the undertaker shall use its reasonable endeavours to obtain alternative rights in other land in which the alternative apparatus is to be constructed;

- (b) should the undertaker not be able to obtain the alternative rights required under paragraph (a) then the undertaker and WPD shall use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require alternative apparatus to be constructed in land other than Order land and does not require alternative rights;
 - (c) if alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker and the undertaker is unable to afford such facilities and rights as are mentioned in paragraph (a) and an alternative engineering solution cannot be agreed in accordance with paragraph (b), WPD must on receipt of written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to a requirement on WPD to use its compulsory purchase powers to this end unless WPD elects to do so.
- (3) Any alternative apparatus required pursuant to sub-paragraph (2) must be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 86.
- (4) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 86, and after the grant to WPD of any such facilities and rights as are referred to in sub-paragraph (2), 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.
- (5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to WPD 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 WPD, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.
- (6) Nothing in sub-paragraph (5) 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 600 millimetres of the apparatus.
- (7) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD 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 upon such terms and conditions as may be agreed between the undertaker and WPD or in default of agreement settled in accordance with paragraph 86.
- (8) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—
- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and
 - (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in the land for which the alternative apparatus is to be substituted.
- (9) 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 expert less favourable on the whole to WPD 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 expert must make such provision for the payment of

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compensation by the undertaker to WPD as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

(10) If in accordance with the provisions of this Part of this Schedule WPD require that alternative apparatus of better type, of greater capacity or of greater dimensions, or at a greater depth is necessary in substitution for existing apparatus which for WPD's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development WPD must deduct the cost of such additional requirements from the amount payable by the undertaker pursuant to paragraph 85(1).

(11) For the purposes of sub-paragraph (10)—

- (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 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.

84.—(1) Not less than 28 days before the undertaker intends to start the execution of any specified work, the undertaker must submit to WPD a plan, section and description of the works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3).

(2) Subject to sub-paragraph (3) the undertaker must not commence any works to which sub-paragraph (1) applies until WPD has given written approval of the plan so submitted, and identified any reasonable requirements it has in relation to the carrying out of the works such approval not to be unreasonably withheld or delayed.

(3) If by the expiry of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted WPD has not advised the undertaker in writing of its approval or disapproval of the plans and any reasonable requirements for the alteration or otherwise for the protection of the apparatus, or for securing access to it, it shall be deemed to have approved the plans, sections or descriptions as submitted.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by WPD and WPD is entitled to watch and inspect the execution of those works.

(5) At all times when carrying out any works authorised under the Order the undertaker must comply with WPD's Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014), the Energy Network Association's A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines (undated), the Health and Safety Executive's GS6 Avoiding Danger from Overhead Power Lines and the Health and Safety Executive's HSG47 Avoiding Danger from Underground Services (Third Edition) (2014) as the same may be replaced from time to time.

(6) If WPD, in accordance with sub-paragraph (2) 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 subject to sub-paragraph (3), paragraphs 83(1) to (6) apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 83(2).

(7) 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to WPD notice as soon as is reasonably practicable and a plan, section and

description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

85.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to WPD the proper and reasonable expenses reasonably incurred by WPD in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any alternative apparatus arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) Subject to sub-paragraphs (3) and (4), if by reason or in consequence of the construction of any specified work, 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 WPD the undertaker is to—

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

(3) Nothing in sub-paragraph (2) 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 WPD, its officers, servants, contractors or agents.

(4) WPD 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 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.

(5) WPD shall not be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

Expert determination

86.—(1) Article 56 (arbitration) applies to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use reasonable endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 14 days of receipt of the submission;

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- (c) issue a decision within 28 days of receipt of the submissions under sub-paragraph (5)(a); and
 - (d) give reasons for the decision.
- (6) The expert must consider where relevant—
- (a) the development outcome sought by the undertaker;
 - (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
 - (c) the nature of the power sought to be exercised by the undertaker;
 - (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
 - (e) any other important and relevant consideration.
- (7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 56.

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

88. The provisions of Part 2 of this Schedule do not apply in relation to WPD or any apparatus of WPD.

PART 8

For the protection of National Grid as electricity undertaker

Application

89. For the protection of National Grid the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and National Grid.

Interpretation

90. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“2016 Order” means the National Grid (Hinkley Point C Connection Project) Order 2016 as amended;

“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, together with any replacement apparatus and such other apparatus constructed that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

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“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace 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 terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the undertaker (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

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

“National Grid” means National Grid Electricity Transmission plc (registered company number 02366977);

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any existing apparatus the removal of which has not been required by the undertaker under paragraph 93(2) or otherwise; and/or
- (b) may in any way adversely affect any existing apparatus the removal of which has not been required by the undertaker under paragraph 95(3) or otherwise;

“undertaker” means the undertaker as defined in article 2 of this Order.

91. Except for paragraphs 94 (apparatus of National Grid in stopped up streets), 98 (retained apparatus), 99 (expenses) and 100 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

92. The provisions of Part 2 of this Schedule do not apply in relation to National Grid or any apparatus of National Grid.

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93.—(1) The undertaker and National Grid will co-operate and work together to secure that the works proposed to be carried out by National Grid under the powers of the 2016 Order and the authorised works to be carried out by the undertaker under this Order will so far as reasonably possible be programmed, and arrangements for the carrying out, use and maintenance of those works will be made, so as, so far as reasonably possible, to avoid undue delay or any conflict arising between the carrying out, use and maintenance of those proposed works and carrying out, use and maintenance of the authorised development.

(2) Any consent, agreement or approval by National Grid or the undertaker under this Part of this Schedule must not be unreasonably withheld or delayed.

Apparatus of National Grid in stopped up streets

94.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 14 (permanent stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to National Grid, or will procure the granting to National Grid of, legal easements reasonably satisfactory to it in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (temporary stopping up of streets and public rights of way), National Grid will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of land

95.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not acquire or extinguish any land interest or apparatus or override any easement and/or other interest of National Grid, including any rights contained in the 2016 Order, otherwise than by agreement.

(2) As a condition of agreement between the parties in 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 National Grid 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 and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/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) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 98 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under paragraph 95(1).

Removal of existing apparatus

96.—(1) If, in the exercise of the agreement reached in accordance with paragraph 95 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed or requires that National Grid’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of National Grid 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 National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 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 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 97(1)) the necessary facilities and rights for the construction of alternative apparatus in other land of or land secured by 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 or land 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, National Grid must, as soon as is reasonably possible and on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land 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 National Grid and the undertaker or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 56, 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 the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

97.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid 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 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 otherwise agreed by National Grid.

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(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid 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, the matter will be referred to arbitration in accordance with paragraph 104 (arbitration) and the arbitrator shall 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

98.—(1) Not less than 56 days before the commencement of any specified 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 96(2) or otherwise, the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to specified works which will or may be situated on, over, under or within 15 metres measured in any direction of any existing apparatus, or involve embankment works within 15 metres of any existing apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

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

(3) In relation to any works which 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 two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to 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-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraphs (2) or (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any existing apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any existing apparatus and gives written notice to the undertaker of that requirement, paragraphs 89 to 91 and 95 to 97 apply as if the removal of the apparatus had been required by the undertaker under paragraph 96(2).

(10) 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 authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

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

(a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (12) at all times.

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

Expenses

99.—(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 or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

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- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 96(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
 - (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) There will be deducted from any sum payable under sub-paragraph (1) 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, 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 56 (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 National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save 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 will be borne by the undertaker.
- (4) For the purposes of sub-paragraph (3)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus will 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 will be treated as if it also had been agreed or had been so determined.
- (5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, 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 which represents that benefit.

Indemnity

100.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works 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 him) 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 these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised 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 will—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty 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 aforesaid other than arising from any default of National Grid.

(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 or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of 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 does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose 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 such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

Enactments and agreements

101. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule shall affect 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

102. Where in consequence of the proposed construction of any of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 96(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 98, the undertaker shall 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

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account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

Access

103. If in consequence of the agreement reached in accordance with paragraph 95(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 National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

104. Any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 56 (arbitration).

Notices

105. The plans submitted to National Grid by the undertaker pursuant to paragraph 98 must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 9

For the protection of Wales and West Utilities (“WWU”)

106. For the protection of WWU in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and WWU, have effect.

107. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable WWU to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by WWU for the purposes of gas supply and includes 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

“WWU” means Wales & West Utilities Limited (Company No. 05046791) whose registered office is at Wales & West House, Spooner Close Coedkernew, Newport, South Wales, NP10 8FZ, a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽¹³⁾.

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

109. 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.

(13) 1986 c. 44. Section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

110.—(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, that apparatus must not be removed under this Part of this Schedule and any right of WWU 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 WWU.

(2) If, for the purpose of executing any works authorised by this Order in, on, over, 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 WWU written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order WWU reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to WWU 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, WWU must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, or agree with the undertaker an alternative route for the alternative apparatus over land in respect of which it is possible for the undertaker to obtain the relevant facilities and rights. For the avoidance of doubt, WWU shall not be obliged to exercise its compulsory purchase powers pursuant to the Gas Act 1986 in order to obtain any such facilities or rights and WWU shall retain an absolute discretion as to whether it shall choose to exercise those powers.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between WWU and the undertaker, or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) WWU must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration as referred to in sub-paragraph (4) in accordance with article 56 (arbitration), and after the grant to WWU of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed as soon as reasonably practicable 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 WWU 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 WWU, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WWU.

(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.

111.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WWU 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 WWU or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

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

- (a) give effect to all reasonable requirements of Network Rail and the undertaker for ensuring the safety and efficient operation of the railway which forms or is to form part of Network Rail's network and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or the undertaker or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) 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 WWU 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 WWU as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

112.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 110(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 110(2), the undertaker must submit to WWU a plan, section and description of the works to be executed.

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

(3) Any requirements made by WWU under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If WWU 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 106 to 110 apply as if the removal of the apparatus had been required by the undertaker under paragraph 110(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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency, but in that case it must give to WWU notice as soon as reasonably practicable and a plan, section and description of those works as soon as reasonably practicable if possible before carrying out those works, or if not, as soon as reasonably practicable afterwards and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) For the avoidance of doubt, whenever the undertaker carries out any works in the vicinity of any apparatus of WWU and whether or not WWU has made any requirements pursuant to sub-paragraph (2) above, the undertaker must comply with—

- (a) all applicable health and safety laws, including the Construction (Design and Management) Regulations 2015;

- (b) the Pipeline Safety Regulations 1996; and
- (c) the safety guidance published from time to time by WWU and the HSE.

113.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to WWU the reasonable expenses incurred by WWU in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including: costs or compensation payable in connection with the acquisition of land for that purpose; and any reasonable legal or other professional costs properly incurred relating to any such works to apparatus, or to the provision of alternative apparatus) which may be required in consequence of the execution of any such works as are referred to in paragraph 110(2).

(2) If in accordance with the provisions of this Part of this Schedule WWU require that alternative apparatus of better type, of greater capacity or of greater dimensions, or at a greater depth is necessary in substitution for existing apparatus which for WWU's requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development WWU must deduct the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(3) For the purposes of sub-paragraph (2) 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.

(4) For the avoidance of doubt and subject to paragraph 108, the provisions of sub-paragraph (1) require the undertaker to repay the full costs of any works carried out to WWU's apparatus, or in order to protect that apparatus, or in consequence of any works carried out in the vicinity of that apparatus by the undertaker.

114.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 110(2), 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 WWU, or there is any interruption in any service provided, or in the supply of any goods, by WWU, the undertaker must—

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

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 WWU, its officers, servants, contractors or agents.

(3) WWU 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 which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

116. The provisions of Part 2 of this Schedule do not apply in relation to WWU or any apparatus of WWU.

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PART 10

For the protection of the National Trust

117.—(1) The provisions of this Part of this Schedule have effect for the protection of the Trust unless otherwise agreed in writing between the undertaker and the Trust.

(2) In this Part of this Schedule—

“activities” means vegetation clearance, removal of loose rocks, rock scaling, insertion of rock bolts and erecting catch fences and associated stays, cables and anchors;

“construction” includes execution, placing, erecting and insertion, and “construct” and “constructed” have corresponding meanings;

“emergency” means a situation which—

- (a) is unexpected, in that there is little or no warning, or aspects of the event could not have reasonably been predicted in advance;
- (b) is a serious event presenting a risk of harm or damage to people, property or the environment; and
- (c) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and assessments of risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any work and details of the extent, timing and duration of any proposed occupation of property belonging to the Trust for the purpose of engaging in the activities;

“Quarry Bridge 2 works” means the reconstruction of the accommodation bridge under the railway at 122 miles 74 chains providing access to the property of the Trust;

“the Trust” means The National Trust for Places of Historic Interest or Natural Beauty (Registered Charity 205846); and

“Trust property” means any property belonging to the Trust.

Powers of compulsory acquisition

118. The powers of article 27 (compulsory acquisition of rights or imposition of covenants) and article 31 (acquisition of subsoil or airspace only) may only be exercised in relation to Trust property with the consent of the Trust.

Works provisions

119.—(1) The undertaker must before commencing activities on Trust property or the Quarry Bridge 2 works under the powers of this Order supply to the Trust proper and sufficient plans and method statements for the proposed activities for the reasonable approval of the Trust and the activities must not be commenced except in accordance with such plans and method statements as have been approved in writing by the Trust or settled in accordance with paragraph 126.

(2) The approval of the Trust 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 the Trust the Trust has not indicated its disapproval of those plans and the grounds of disapproval the undertaker may serve upon the Trust written notice requiring the Trust to intimate its approval or disapproval within a further period of 14 days beginning with the date upon which the Trust receives

written notice from the undertaker. If by the expiry of the further 14 days the Trust has not intimated its approval or disapproval, the Trust will be deemed to have approved the plans as submitted.

120.—(1) Any activities to be carried out by virtue of paragraph 119 must, when commenced, be carried out—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 119;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the Trust;
- (c) in such manner as to cause as little damage as is possible to the Trust’s property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe access to Trust property.

(2) If any damage to Trust property or any such interference or obstruction is caused by the carrying out of, or in consequence of the entry on to Trust property, the undertaker must, notwithstanding any such approval, make good such damage and must pay to the Trust all reasonable expenses to which the Trust may be put by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of the Trust or its servants, contractors or agents; or
- (b) any liability on the Trust with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

121. The undertaker must—

- (a) at all times afford reasonable facilities to the Trust for access to inspect the activities of the undertaker on Trust property; and
- (b) supply the Trust with all such information as the Trust may reasonably require with regard to activities of the undertaker on Trust property.

122.—(1) Subject to sub-paragraph (2) the undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any Trust property, unless preventing such access is with the consent of the Trust or is in the case of an emergency.

(2) Sub-paragraph (1) does not apply to the Quarry Bridge 2 works while they are under construction, save that access to any Trust property must not be prevented in the case of an emergency.

123.—(1) Subject to sub-paragraph (2) where in the exercise of the powers conferred by this Order, the undertaker proposes to interfere with or obstruct access by the Trust to Trust property, it must give the Trust 56 days’ written notice of that requirement.

(2) Sub-paragraph (1) does not apply in the case of an emergency.

124. Where under this Part of this Schedule the Trust is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed but may be subject to reasonable conditions.

125. The undertaker must repay to the Trust all costs, charges and expenses which it may reasonably incur or which it may sustain—

- (a) in the examination of plans under this Part of this Schedule;
- (b) in respect of the approval of plans submitted by the undertaker and the supervision by the Trust of the carrying out or construction of any activities or the Quarry Bridge 2 works

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and otherwise in connection with the implementation of the provisions of this Part of this Schedule; and

- (c) in respect of the employment or procurement of the services of any persons whom it is reasonably necessary to appoint for inspecting and watching the activities of the undertaker on Trust property.

Expert determination

126.—(1) Article 56 (arbitration) applies to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use all reasonable endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 14 days of receipt of the submission;
- (c) issue a decision within 28 days of receipt of the submissions under sub-paragraph (5)(a); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 56 (arbitration).