

## SCHEDULE 9

Article 38

### Protective provisions

## PART 1

### Protection for electricity, gas, water and sewerage undertakers

**1.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and the utility undertaker in question.

**2.** In this Part—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

(a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(1), belonging to or maintained by that licence holder;

(b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by that gas transporter within the meaning of Part 1 of the Gas Act 1986(2) for the purposes of gas supply;

(c) in the case of a utility undertaker within paragraph (c) of the definition of that term, mains, pipes or other apparatus belonging to or maintained by that water undertaker for the purposes of water supply; and

(d) in the case of a utility undertaker within paragraph (d) of the definition of that term—

(i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991(3); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewerage disposal works, at future date) of that Act(4),

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;

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

“utility undertaker” means—

(e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

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(1) 1989 c. 29.

(2) 1986 c. 44.

(3) 1991 c. 56.

(4) Section 104 was amended by section 42(3) of the Flood and Water Management Act 2010 (c. 29).

- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (g) a water undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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

### On street apparatus and offshore works

3. This Part does not apply to—

- (a) apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) the offshore works.

### Acquisition of land

4. Regardless of any provision of this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### Removal of apparatus

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part, 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, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed; and in that case (or if in consequence of the exercise of any of the powers conferred by this Order 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 reasonable 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 must 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 44 (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 44 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the

alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

(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**

6.—(1) Where, in accordance with the provisions of this Part, 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 must 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 44 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along the authorised development, the arbitrator 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 that 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 or along the authorised project 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**

7.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the 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 under sub-paragraph (1) is 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, the provisions of this Part apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not 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 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

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses agreed with the undertaker in advance and reasonably 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 which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

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

- (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 44 (arbitration) to be necessary then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must 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 pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount 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, is to be reduced by the amount which represents that benefit.

**9.**—(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 5(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 and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

## Miscellaneous

**10.** Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

## PART 2

### For the protection of Dŵr Cymru Cyfyngedig (DC)

**11.** For the protection of DC referred to in this Part 2 of Schedule 9, the following provisions, unless otherwise agreed in writing between the undertaker and DC, have effect.

**12.** In this Part of this Schedule:

“accessories” has the same meaning as that set out in section 219 of the Water Industry Act 1991 but also includes any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or surface water and which is part of a sustainable drainage system;

“DC apparatus” means all apparatus or accessories vested in or belonging to DC for the purpose of carrying on its statutory undertaking including reservoirs, water treatment works and waste water treatment works;

“clearance area” means the area of land:

- (a) within 3 metres either side of the centre line of any public sewer or public water main that is less than 300mm in diameter; or
- (b) within 6 metres either side of a public sewer or public water main where the public sewer or public water main is 300mm in diameter or more.

“DC” means Dŵr Cymru Cyfyngedig, a limited company registered in Wales under Company No. 2366777 and having its registered office at Dwr Cymru Welsh Water, Linea, Fortran Road, St Mellons, Cardiff, Wales, CF3 0LT or its properly authorised agents or sub-contractors;

“draft specification” means a detailed plan, cross- section and description of the works to be prepared by the undertaker (including, without limitation, a method statement and

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risk assessment setting out the intention in respect of the works, construction methods and programmes, position of the affected DC apparatus and intended works;

“emergency works” has the same meaning as in section 52 of the 1991 Act;

“functions” has the same meaning as in section 219 WIA 1991 and includes powers and duties;

“in” in a context referring to DC apparatus in land includes a reference to DC apparatus under, over or upon land;

“sustainable drainage system” means any structure designed to receive rainwater and other surface water where such structure includes any feature or aspect of design that is intended to receive or facilitate the receipt of rainwater except a public sewer or a natural watercourse;

“WIA 1991” means the Water Industry Act 1991 ([c.56](#)) as amended;

“works” means any works forming part of the authorised development in, on, over or under any land purchased, held, or used under this Order that are within 15 metres measured in any direction of any DC apparatus, or reasonably likely to affect any DC apparatus together with all ancillary actions relating hereto; and

for the avoidance of doubt, all other terms are as defined in Part 2 of this Schedule or article 2 of this Order.

**13.—(1)** Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker is not to acquire any DC apparatus or its accessories or override or extinguish any easement or other interest of DC or acquire any land or other interest of DC identified in the book of reference or create any new rights over the same otherwise than by agreement with DC (not to be unreasonably withheld or delayed) in accordance with the provisions of this Schedule.

(2) Sub-paragraph (1) does not apply to the powers conferred on the undertaker by this Order to interfere temporarily with DC’s rights to access DC apparatus or accessories but subject always to paragraphs 17 and 18 of this Part and to the undertaker giving DC 28 days notice of such interference.

### Precedence of the WIA 1991

**14.—(1)** Regardless of any provision of this Order and this Schedule the undertaker must comply fully with all provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DC apparatus and nothing in this Order releases the undertaker from the requirement to comply with the provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DC apparatus, including without limitation:

- (a) sections 41-44 of the WIA 1991 in respect of water main requisitions;
- (b) section 45 of the WIA 1991 in respect of any connections to a water main;
- (c) sections 98-101 of the WIA 1991 in respect of sewer requisitions;
- (d) section 102 of the WIA 1991 in respect of the adoption of sewers and disposal works;
- (e) section 104 of the WIA 1991 in respect of the adoption of any sewers, drains or sewage disposal works as part of the development;
- (f) sections 106 to 109 of the WIA 1991 (inclusive) in respect of any connections to public sewers;
- (g) section 111 of the WIA 1991 in respect of the restrictions on use of public sewers;
- (h) sections 158 and 159 of the WIA 1991 in respect of statutory rights of access to DC apparatus;
- (i) section 174 of the WIA 1991 in respect of offences of interference with works etc;

- (j) section 178 of the WIA 1991 in respect of obstruction of sewerage works etc;
  - (k) section 185 of the WIA 1991 in respect of the removal, diversion or alteration of DC apparatus.
- (2) The arbitration provisions at article 44 of this Order must not apply where DC uses a warrant of entry in accordance with the provisions of the WIA 1991.

### **Protection of DC apparatus**

**15.—(1)** Not less than 28 days before starting the execution of any works that are within the clearance area or will, or could reasonably foreseeably affect, any DC apparatus the removal or alteration of which has not been required by the undertaker under paragraph 14(l), the undertaker must submit to DC written notice together with a draft specification. For the purposes of preparing the draft specification DC must, following a written request and subject to such reasonable conditions as may be imposed by DC (including in respect of payment of its reasonable costs in meeting the request), provide the undertaker with copies of such plans and records of its apparatus as may be held by DC.

(2) DC is to examine the draft specification submitted under sub-paragraph 15(1) and give its written consent or proposed amendments (each not to be unreasonably withheld or delayed) to the draft specification (including the proposed commencement date and anticipated completion date) within 28 days from the date of receipt (and in the event of amendments the process in this sub-paragraph 15(2) will be repeated where those amendments are not accepted by the undertaker). For the avoidance of doubt, DC's proposed amendments may include such reasonable requirements for the alteration (including but not limited to the extension of DC apparatus) or otherwise for the protection of DC apparatus, or for securing access to it.

(3) If after the expiry of 28 days DC has not communicated approval or disapproval under sub-paragraph 15(2), the undertaker may write to DC at [DeveloperServicesassetenquiries@dwrcymru.com](mailto:DeveloperServicesassetenquiries@dwrcymru.com) or such other address as DC may appoint instead for that purpose and notify the undertaker in writing clearly stating that no response has been received from DC under sub-paragraph 15(2) and that a response must be provided to the undertaker within 14 days from the date of receipt of the correspondence sent under this sub-paragraph 15(3) and if no response is received within 14 days from the date of receipt DC is deemed to have approved the plans as supplied under sub-paragraph 15(2).

(4) Once approved under sub-paragraph 15(2) or 15(3), the draft specification is to become the specification and the works are to be executed only in accordance with the specification and such reasonable requirements as may be made in accordance with sub-paragraph 15(2) and DC is entitled to watch and inspect the execution of those works.

(5) Nothing in this paragraph 15 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 draft specification instead of the draft specification previously submitted, and having done so the provisions of this paragraph 15 apply to and in respect of the new draft specification.

(6) The undertaker is not required to comply with sub-paragraph 15(1) in a case of emergency provided it has complied with paragraph 18 below save that the undertaker is to comply with sub-paragraphs 15(1) and (4) above in so far as is reasonably practicable in the circumstances.

(7) DC may opt to carry out any temporary and/or protective works specified under sub-paragraph 15(2) to DC apparatus, and if DC opts to do so it will:

- (a) agree the scope and timings of the works with the undertaker (and the undertaker must not unreasonably withhold or delay its agreement to the same);
- (b) provide an invoice together with supporting evidence of the estimated costs of the works on the basis of which it is to agree with undertaker the reasonable costs of the works to be met by the undertaker;

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- (c) following agreement and payment of the costs, DC will as soon as reasonably practicable carry out and complete the works; and
  - (d) notify the undertaker immediately in writing upon completion of the temporary and/or protective works.
- (8) Where DC apparatus will be affected by the works the undertaker must determine the exact location of DC apparatus prior to any works being carried out by the undertaker.
- (9) The undertaker must give DC at least 7 days' advance written notice of making any trial holes within 15 metres measured in any direction of any DC apparatus which must include details of the timings and location of the trial holes and allow a representative of DC to attend and observe these works.
- (10) Any affected DC apparatus which is no longer required by DC but is not removed shall be transferred to the undertaker by way of a deed of transfer from DC at the undertaker's expense and on such terms as DC reasonably requires.

### **Suspension of works**

- 16.—(1)** DC is entitled to instruct the undertaker to suspend the relevant works if in DC's reasonable and proper opinion the actions of the undertaker, or those of its contractor(s) or subcontractor(s) in carrying out the works, have caused damage to any DC apparatus. In the event of such instruction being given by DC—
- (a) the undertaker must procure that it and its contractor(s) and subcontractor(s) shall forthwith suspend or cease the works having due regard to health and safety factors and shall discuss and agree with DC the remedial actions required prior to resuming the works;
  - (b) the undertaker and DC must act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the works;
  - (c) DC must submit to the undertaker within 5 days following the suspension, a written notice specifying the reasons for suspending the works;
  - (d) in the event that DC fails to supply the written notice within 5 days of suspension DC's instruction to suspend the works will be void and the undertaker will be entitled to recommence the works; and
  - (e) DC must commence, carry out and complete any remedial works pursuant to subparagraph 16(1), as soon as reasonably practicable and DC must give the undertaker notice immediately upon completion of such remedial works and on receipt of such notice the undertaker is entitled to resume the works.
- (2) DCC is entitled to reclaim all reasonable costs of all remedial works undertaken in accordance with this paragraph 16.

### **Co-Operation**

- 17.—(1)** In the event that either the undertaker or DC (for the purpose of this paragraph 16 "the party" or together "the parties") wishes to take any action which would impact on the ability of the undertaker to carry out the authorised development or DC to carry out its statutory functions, the parties must use reasonable endeavours to cooperate with one another in order to align work streams so to minimise or avoid disruption to the other party's works. In respect of the references to 'work' and 'works' in this sub-paragraph 17(1), to the extent that this refers to 'work' or 'works' to be undertaken by DC, the definition of works in paragraph 12 of this Part does not apply.

- (2) Subject to paragraph 18, differences or disputes arising between the undertaker and DC under this Schedule will, unless otherwise agreed in writing between the undertaker and DC, be determined by arbitration in accordance with article 44 (arbitration) of the Order.

(3) For the avoidance of doubt whenever DC's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by DC is required, it must not be unreasonably withheld or delayed.

### **Emergency Works**

**18.**—(1) The undertaker is permitted to carry out emergency works provided that it first notifies DC of the proposed emergency works. For the avoidance of doubt, in the event that DC suffers any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification the indemnity in paragraph 19 will apply.

(2) DC must at all times be permitted to carry out any emergency works in relation to its DC apparatus within the Order limits in accordance with Part II Schedule 6 WIA 1991.

(3) Emergency works required in order for DC to fulfil its statutory functions under sub-paragraph 18(2) takes precedence over works to be carried out by the undertaker and, in such circumstances, the undertaker must reschedule its works accordingly.

(4) In respect of the references to 'work' and 'works' in this paragraph 18, to the extent that this is 'work' or 'works' to be undertaken by DC, the definition of works in paragraph 12 of this Part does not apply.

### **Damage to DC apparatus**

**19.**—(1) If, for any reason or in consequence of the construction of any of the works, any damage is caused to any DC apparatus (other than DC apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of the works), or there is any interruption in any service provided, or in the supply of any goods, by DC, the undertaker must—

(a) bear and pay on demand accompanied by an invoice or claim by DC the cost reasonably and properly incurred and documented by DC in making good any damage or restoring the supply; and

(b) make reasonable compensation to DC for any other expenses, loss, damages, penalty or costs incurred by DC, by reason or in consequence of any the damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect of—

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of DC, its officers, employees, contractors or agents; and / or

(b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(3) DC must give the undertaker reasonable notice of any such claim or demand and no settlement, admission of liability or compromise or demand is to be made without the consent of the undertaker.

(4) Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and DC in respect of any DC apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.

(5) DC must use its reasonable endeavours to mitigate in whole or in part and to minimise any claims, costs, expenses, losses, damages, demands, and penalties to which the indemnity under this paragraph 19 applies. If requested to do so by the undertaker, DC must provide an explanation of how the claim has been minimised. The undertaker will only be liable under this paragraph 19 for claims reasonably incurred by DC.

## PART 3

### For the protection of National Grid

#### **Application**

**20.** The provisions of this Part have effect for the protection of National Grid unless otherwise agreed in writing between the undertaker and National Grid.

#### **Interpretation**

**21.—(1)** In this Part—

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

“apparatus” means:

- (a) electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid together with any replacement apparatus; and
- (b) such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or must be lodged or which gives or will give access to apparatus; and
- (c) any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to, operated or maintained by National Grid for the purposes of the construction, operation and maintenance of the Bodelwyddan Project, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for the beneficial use by National Grid (“Bodelwyddan apparatus”);

“authorised development” has the same meaning as in article 2 (interpretation) of this Order (unless otherwise specified) and includes any associated development authorised by the Order and for the purposes of this Part includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

“Bodelwyddan Project” means the proposed extension of the Bodelwyddan substation, diversion of gas pipeline and overhead electricity line upgrade to be undertaken by National Grid and any temporary construction compound and laydown area for such works;

“Bodelwyddan Site” includes—

- (a) land on which any Bodelwyddan apparatus is situated; and
- (b) land on which Bodelwyddan apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the Bodelwyddan Project (in so far as the same has been notified by National Grid in writing to the undertaker);

“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 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;

“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” 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 (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor company;

“National Grid connection works” means any part of Work Nos. 36, 39, 39A, 40 and 41 as described in Schedule 1 of this Order (authorised development);

“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; and

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

- (a) will or may be situated over, or within 15 metres measured in any direction of, any apparatus the removal of which has not been required by the undertaker under paragraph 31(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 31(2) or otherwise; or
- (c) includes any of the activities that are referred to in National Grid’s publication “Development near overhead lines “ENA 43-8 and HSE’s guidance note 6 “Avoiding Danger from Overhead Lines” and HSE’s guidance note HSG47 “Avoiding danger from underground services”.

### **Interaction with the Bodelwyddan Project**

**22.** Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the construction, maintenance and operation of the authorised development and the Bodelwyddan Project. For the purposes of this paragraph, “reasonable endeavours” means—

- (a) undertaking consultation on the detailed design and programming of the National Grid connection works and all works associated with or ancillary to the National Grid connection works to ensure that the design and programme for the National Grid connection works does not unreasonably impede or interfere with the Bodelwyddan Project;
- (b) having regard to the proposed programme of works for the Bodelwyddan Project as may be made available to the undertaker by National Grid and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the National Grid connection works and the Bodelwyddan Project;
- (c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and
- (d) keeping National Grid informed on the programme of works for the authorised development.

### **National Grid connection works**

**23.** The undertaker must not except with the agreement of National Grid carry out the National Grid connection works, or any part of it.

**24.**—(1) Before beginning to construct any National Grid connection works, or any part of it, the undertaker must submit to National Grid plans of the relevant National Grid connection works (or part of it) and such further particulars available to it as National Grid may request within 21 days of receipt of the plans reasonably requested.

(2) Any National Grid connection works must not be constructed except in accordance with such plans as may be approved in writing by National Grid.

**25.**—(1) Any approval of National Grid required under this Schedule—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds or refusal; and
- (c) may be given subject to such reasonable requirements as National Grid may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the Bodelwyddan Project or otherwise for the protection of Bodelwyddan apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph 39.

(2) National Grid must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If National Grid require further particulars, such particulars must be requested by National Grid no later than 21 days from the submission of plans and thereafter National Grid must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

**26.**—(1) The undertaker must give to National Grid not less than 14 days' notice in writing of its intention to commence construction of any National Grid connection works and notice in writing of its completion not later than 7 days after the date on which it is completed and National Grid will be entitled by its officer to watch and inspect the construction of such works.

(2) If any part of the National Grid connection works is constructed otherwise than in accordance with paragraph 24(2) above National Grid may by notice in writing identify the extent to which the National Grid connection works do not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 24(2) of this Schedule or such alternative works as may be agreed with National Grid or as otherwise may be agreed between the parties.

(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (2) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, National Grid may execute the works specified in the notice and any reasonable expenditure incurred by National Grid in so doing will be recoverable from the undertaker.

(4) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, National Grid will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 39.

## On Street Apparatus

**27.** Except for paragraphs 28 (apparatus of National Grid in streets subject to temporary stopping up), 33 (retained apparatus: protection of National Grid as electricity undertaker), 35 (expenses) and 35 (indemnity) of this Schedule, the other provisions 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 (street works in England and Wales) of the 1991 Act.

### **Apparatus of National Grid in streets subject to temporary stopping up**

**28.**—(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 12 (temporary restriction of use of streets), if National Grid has any apparatus in the street or accessed via that street National Grid is 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 National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 31 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 33.

(2) Notwithstanding a temporary restriction under article 12 (temporary restriction of use of streets), National Grid is at liberty at all times to take all necessary access across any such street or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion is in that street.

### **Protective works to buildings**

**29.** The undertaker, in the case of the powers conferred by article 16 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus or to the Bodelwyddan Site without the written consent of National Grid which will not unreasonably be withheld.

### **Acquisition of land**

**30.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker may not (a) acquire or take temporary possession of any land interest or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not unless otherwise agreed in writing with National Grid acquire any land forming part of the Bodelwyddan Site (such agreement not to be unreasonably withheld or delayed).

(3) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect 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 development.

(4) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part relating to the relocation or removal of apparatus (including

but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(5) Any agreement or consent granted by National Grid under paragraph 33 or any other paragraph of this Part must not be taken to constitute agreement under sub-paragraph 30(1).

### **Removal of apparatus**

**31.**—(1) If, in the exercise of the powers conferred by this Order the undertaker acquires any interest in or possesses temporarily any Order land in which any apparatus is placed, that apparatus must not be removed under this Part 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).

(2) If, for the purpose of executing any works comprised in the authorised development 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 a minimum of 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), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 32(1) below) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of 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, on receipt of a 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 does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to do so.

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

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and 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.

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

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

(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 may be referred to arbitration under paragraph 39 (arbitration) and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph, article 44 (arbitration) applies.

### **Retained apparatus: Protection of National Grid as Electricity Undertaker**

**33.—(1)** Not less than 56 days before the commencement of any specified works, 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 works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) which involve embankment works within 15 metres of any 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 they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation and positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any 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 adjacent electricity towers which are within the Order limits or within 10 metres of the Order limits, 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 trench supporting structures;
- (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

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- (h) evidence that trench collapse resistance and supporting structures bearing capacity are to be designed to support overhead line construction traffic of at least 26 tonnes in weight.
- (4) The undertaker must not commence any works to which sub-paragraph (2) or (3) applies until National Grid has given written approval of the plan so submitted.
- (5) Any approval of National Grid required under sub-paragraph (4)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8);
  - (b) may be given subject to such reasonable requirements as National Grid may have in connection with the safe and efficient construction, commissioning, operation and maintenance of the Bodelwyddan Project; and
  - (c) and must not be unreasonably withheld or delayed.
- (6) In relation to a work to which sub-paragraph (2) or (3) applies, 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 apparatus.
- (7) Works executed under sub-paragraph (2) or (3) must only be executed in accordance with the plan submitted under sub-paragraph (1) or as relevant sub-paragraph (6) 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 (5), (6), (8) or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid is entitled to watch and inspect the execution of those works.
- (8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of its requirement for such works from the date of submission of a plan in line with this paragraph (except in an emergency).
- (9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs 1 to 3 and 6 to 8 applies as if the removal of the apparatus had been required by the undertaker under paragraph 31(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 development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.
- (11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act 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) in so far 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 ENA 43-8 and the Health and Safety Executive's guidance note 6 "Avoiding danger from overhead power lines".

## Expenses

**34.—(1)** Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part including without limitation—

- (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 31(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, where no written diversion agreement is otherwise in place;
  - (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.
- (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 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—
- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
  - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,
- and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement settled by arbitration in accordance with article 44 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph 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)—

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- (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

**35.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part 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 purpose of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly 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 by 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 as a consequence of the authorised development or under its supervision does 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 workmanlike manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

- (3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—
- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, employees, contractors or agents; and
  - (b) any authorised development or any other works authorised by this Part carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the 2008 Act or article 6 (benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”) any works yet to be executed and not falling within this sub-paragraph (b) are subject to the full terms of this Part including this paragraph in respect of such new apparatus.
- (4) National Grid must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand must be made, unless payment is

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

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

### **Enactments and agreements**

**36.** Save to the extent provided for to the contrary elsewhere in this Part or by agreement in writing between the undertaker and National Grid, nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**37.—(1)** Where in consequence of the proposed construction of any part of the authorised development the undertaker or National Grid requires the removal of apparatus under paragraph 31(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 33, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

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

### **Access**

**38.** If in consequence of the agreement reached in accordance with paragraph 30(1) or the powers granted under this Order the access to any apparatus or the Bodelwyddan Site is materially obstructed, the undertaker must provide such alternative means of access to such apparatus or the Bodelwyddan Site as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**39.** Save for differences or disputes arising under paragraphs 31(2), 31(4), and 33 any difference or dispute arising between the undertaker and National Grid under this Part must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 44 (arbitration).

### **Notices**

**40.** The plans submitted to National Grid by the undertaker pursuant to this Part must be submitted to <https://lsbud.co.uk/> 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 4

### For the protection of SP Manweb as electricity undertaker

#### Application

**41.** The following provisions have effect for the protection of SP Manweb unless otherwise agreed in writing between the undertaker and SP Manweb.

#### Interpretation

**42.** In this Part of this Schedule—

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

“apparatus” means electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by SP Manweb together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SP Manweb 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 development” 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 development and construction of any works authorised by this Part of this Schedule;

“commence” has the same meaning as in article 2 of this Order and commencement must 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;

“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” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SP Manweb including construct, use, repair, alter, inspect, renew or remove the apparatus;

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

“SP Manweb” means SP Manweb PLC (Company No. 02366937) whose registered office is at 3 Prenton Way, Prenton, CH43 3ET or any successor company;

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

- (a) will or may be situated over, or within 15 metres (measured in any direction) of any apparatus the removal of which has not been required by the undertaker under paragraph 45(2) or otherwise;

- (b) is reasonably likely to adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 45(2) or otherwise; and/or
- (c) include any of the activities that are referred to in SP Manweb's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

### **On Street Apparatus**

**43.** Except for paragraphs 47, 48 and 49 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 SP Manweb, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SP Manweb are regulated by the provisions of Part 3 of the 1991 Act.

### **Acquisition of land**

**44.—(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 appropriate or acquire or take temporary possession of any land interest of SP Manweb or appropriate, acquire, extinguish, interfere with or override any easement or other interest or right and/or apparatus of SP Manweb otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between SP Manweb 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 SP Manweb and/or affects the provisions of any enactment or agreement regulating the relations between SP Manweb and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as SP Manweb reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between SP Manweb and the undertaker acting reasonably and which must be no less favourable on the whole to SP Manweb unless otherwise agreed by SP Manweb, 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 development.

(3) 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 SP Manweb and/or other enactments relied upon by SP Manweb as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

(4) No agreement or consent granted by SP Manweb under any other paragraph of this Part of this Schedule constitutes agreement under sub-paragraph (1).

### **Removal of apparatus**

**45.—(1)** If, in the exercise of the agreement reached in accordance with paragraph 44 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of SP Manweb 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 SP Manweb in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any specified works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus

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placed in that land, it must give to SP Manweb at least 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order SP Manweb reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to SP Manweb to its satisfaction (taking into account paragraph 45(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the use and 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, SP Manweb 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 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 SP Manweb and the undertaker.

(5) SP Manweb must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SP Manweb of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) 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 SP Manweb and/or other enactments relied upon by SP Manweb as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

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

**46.—(1)** Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SP Manweb 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 SP Manweb and must be no less favourable on the whole to SP Manweb than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by SP Manweb.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SP Manweb under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SP Manweb 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 in the matter will be referred to arbitration in accordance with paragraph 53 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to SP Manweb as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph, article 44 (arbitration) applies.

## Retained apparatus: Protection of SP Manweb as Electricity Undertaker

47.—(1) Not less than 56 days before the commencement of any specified works the removal of which has not been required by the undertaker under paragraph 45(2), the undertaker must submit to SP Manweb a plan of the works to be executed and seek from SP Manweb 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 (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to SP Manweb under sub-paragraph (1) must include a method statement which is consistent with the principles set out in the outline method statement dated 17 October 2022 provided by the undertaker to SP Manweb and show and describe—

- (a) the exact position of the specified works;
- (b) the level at which the specified works are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) In relation to any specified works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity supports or between any two or more adjacent electricity supports which are within the Order limits or within 10 metres of the Order limits, the plan to be submitted under sub-paragraph (1) must include a method statement which, in addition to the matters set out in sub-paragraph (2), must—

- (a) describe details of any cable trench design including route, dimensions, clearance to support foundations;
- (b) demonstrate that support foundations will not be affected prior to, during and post construction;
- (c) describe load bearing capacities of trench supporting structures;
- (d) describe details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) provide a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) provide written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) provide an assessment of earth rise potential if reasonably required by SP Manweb's engineers;
- (h) provide evidence that trench collapse resistance and supporting structures bearing capacity are 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-paragraph (2) or (3) applies until SP Manweb has given written approval of the plan so submitted provided that SP Manweb must not unreasonably delay notification of its approval or disapproval.

(5) Any approval of SP Manweb required under sub-paragraph (2)—

- (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 or delayed.

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(6) If after the expiry of 56 days SP Manweb has not communicated approval or disapproval, SP Manweb is deemed to have approved the plans as supplied.

(7) In relation to any work requiring the submission of a plan under sub-paragraph (1), SP Manweb 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 apparatus and SP Manweb must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to SP Manweb.

(8) Works requiring the submission of a plan under sub-paragraph (1) must only be executed in accordance with the plan as approved or as amended from time to time by agreement between the undertaker and SP Manweb and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (7), (9) or (10) by SP Manweb for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and SP Manweb will be entitled to watch and inspect the execution of those works.

(9) Where SP Manweb reasonably 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 SP Manweb's reasonable satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and SP Manweb must give 56 days' notice of such works from the date of submission of a plan pursuant to sub-paragraph (1) or (7) (except in an emergency).

(10) If SP Manweb in accordance with sub-paragraphs (8) or (10) 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, sub-paragraphs (1) to (3) and (7) to (9) apply as if the removal of the apparatus had been required by the undertaker under paragraph 45(2).

(11) 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 development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph must apply to and in respect of the new plan.

(12) The undertaker must 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 the SP Manweb notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (7), (8) and (9) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (13) at all times.

(13) At all times when carrying out any works authorised under the Order, the undertaker must comply with statutory requirements and guidelines for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines" in relation to any apparatus and aligning with SP Manweb guidelines.

## Expenses

**48.—(1)** Subject to the following provisions of this paragraph, the undertaker must pay to SP Manweb on demand all reasonable charges, costs and expenses reasonably incurred by SP Manweb in direct consequence of the execution of any authorised development including without limitation in respect of—

- (a) any costs reasonably incurred by or compensation properly paid by SP Manweb in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by SP Manweb as a consequence of SP Manweb;

- (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 45(3); and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SP Manweb;
  - (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 (including any temporary protective works and their removal);
  - (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 44 (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 SP Manweb by virtue of sub-paragraph (1) will 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 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 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) An amount which apart from this sub-paragraph would be payable to SP Manweb 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 SP Manweb 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**

**49.—(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,

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use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker 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 development) or property of SP Manweb, or if there is any interruption in any service provided, or in the supply of any goods by SP Manweb, or SP Manweb becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand accompanied by an invoice or claim from SP Manweb the cost reasonably and properly incurred by SP Manweb in making good such damage or restoring the supply; and
- (b) indemnify SP Manweb for any other expenses, loss, demands, proceedings, damages, claims, penalties or costs incurred by or recovered from SP Manweb, by reason or in consequence of any such damage or interruption or SP Manweb becoming liable to any third party as aforesaid other than arising from any default of SP Manweb,

provided that at all times SP Manweb will be under an obligation to take reasonable steps to mitigate its loss.

(2) The fact that any act or thing may have been done by SP Manweb on behalf of the undertaker or in accordance with a plan approved by SP Manweb or in accordance with any requirement of SP Manweb as a consequence of the authorised development or under its supervision does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this paragraph where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved plan (or as otherwise agreed between the undertaker and SP Manweb pursuant to paragraph 48).

- (3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—
  - (a) any damage or interruption to the extent that it is attributable to the neglect or default of SP Manweb, its officers, employees, contractors or agents;
  - (b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by SP Manweb as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 6 (benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development yet to be executed and not falling within this sub-paragraph 38(b) will be subject to the full terms of this Part of this Schedule including this paragraph in respect of such new apparatus; and / or
  - (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) SP Manweb must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand, unless payment is required in connection with a statutory compensation scheme, is to be made without first consulting the undertaker and considering its representations.

### Enactments and agreements

**50.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SP Manweb and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between

the undertaker and SP Manweb 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**

**51.**—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or SP Manweb requires the removal of apparatus under paragraph 45(2) or SP Manweb makes requirements for the protection or alteration of apparatus under paragraph 47, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of SP Manweb's undertaking and SP Manweb must use its best endeavours to co-operate with the undertaker for that purpose.

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

### **Access**

**52.** If in consequence of the agreement reached in accordance with paragraph 44(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 SP Manweb to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**53.** Save for differences or disputes arising under paragraphs 45(2), 45(4), 45(1) and 47 any difference or dispute arising between the undertaker and SP Manweb under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SP Manweb, determined by arbitration in accordance with article 44 (arbitration).

## **PART 5**

### **Protection for operators of electronic communications code networks**

**54.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and the operator in question.

**55.** In this Part—

“the 2003 Act” means the Communications Act 2003<sup>(5)</sup>;

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

“the electronic communications code” has the same meaning as in section 106<sup>(6)</sup> (application of the electronic communications code) of the 2003 Act;

“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

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(5) 2003 c. 21.

(6) Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).

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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 (infrastructure system) of that code; and

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

**56.** The exercise of the powers conferred by article 29 (statutory undertakers) are subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

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

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

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

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

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

(4) Any difference arising between the undertaker and the operator under this Part must be referred to and settled by arbitration under article 44 (arbitration).

(5) This Part 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 (street works in England and Wales) 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 project.

(6) Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

## PART 6

### For the protection of Network Rail Infrastructure Limited

**58.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Network Rail and, where paragraph 72 applies, any other person on whom rights or obligations are conferred by that paragraph.

**59.** In this Part—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

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

“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 by the Secretary of State in exercise of powers under section 8 of the Railways Act 1993(7);

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(8)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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

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

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

“regulatory consents” means any consent or approval required under:

- (c) the Railways Act 1993;
- (d) the network licence; and/or
- (e) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised development as is or is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and for the avoidance of doubt, includes the maintenance of such works under the

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(7) 1993 c. 43.

(8) 2006 c. 46.

powers conferred by article 5 (power to maintain the authorised development) in respect of such works.

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

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

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

**61.—(1)** The undertaker must not exercise the powers conferred by—

- (a) article 3 (development consent granted by the Order);
- (b) article 5 (power to maintain the authorised development);
- (c) article 14 (discharge of water);
- (d) article 15 (authority to survey and investigate the land);
- (e) article 18 (compulsory acquisition of land);
- (f) article 20 (compulsory acquisition of rights);
- (g) article 22 (private rights);
- (h) article 24 (acquisition of subsoil only);
- (i) article 27 (temporary use of land for carrying out the authorised development);
- (j) article 28 (temporary use of land for maintaining the authorised development);
- (k) article 29 (statutory undertakers);
- (l) article 33 (felling or lopping of trees and removal of hedgerows);
- (m) article 34 (trees subject to tree preservation orders);
- (n) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
- (o) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (p) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (q) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

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 or 272 of the 1990 Act, article 29 (statutory undertakers) or article 22 (private rights), 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, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) 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 but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

**62.—(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 under article 44 (arbitration).

(2) The approval of the engineer under sub-paragraph 62 (1) must not be unreasonably withheld or delayed, and if after 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not communicated disapproval of those plans and the grounds of disapproval—

- (a) the undertaker may serve on the engineer written notice requiring the engineer to communicate approval or disapproval within a further period of 28 days beginning with the date on which the engineer receives written notice from the undertaker; and
- (b) if by the expiry of the further 28 days the engineer has not communicated approval or disapproval, the engineer is deemed to have approved the plans as supplied.

(3) If after the expiry of 28 days beginning with the date on which written notice was served on the engineer under sub-paragraph (1), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unreasonable delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable 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, decommissioning 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—

- (a) 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 without unreasonable delay; and
- (b) the undertaker must not commence the construction of the specified works in question until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

**63.**—(1) Any specified work and any protective works to be constructed by virtue of paragraph 62(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 62;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any interference or obstruction referred to in subparagraph (1)(d) is caused by the carrying out of, or in consequence of, the construction of a specified work, the undertaker must, regardless of any 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 imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its employees, contractors or agents or any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its employees, contractors or agents.

**64.** 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.

**65.** Network Rail must at all times afford reasonable facilities to the undertaker and its employees, contractors or agents for access to any works carried out by Network Rail 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.

**66.**—(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 and efficient operation of the railway of Network Rail, such alterations or additions may be carried out by Network Rail.

(2) 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 or additions which have been reasonably incurred by Network Rail, including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase.

(3) 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 that in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, regardless of any approval of the specified work under paragraph 62(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(4) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 67, provide such details of the formula or method of calculation by which those sums have been calculated as the undertaker may reasonably require.

(5) 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.

**67.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses agreed in advance with the undertaker and reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker under paragraph 62(3) or in constructing any protective works under paragraph 62(4);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, guards 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 reasonable opinion of the engineer, need 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.

**68.—(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 62(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 62(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

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- (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 62(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing 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;
- (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; and
- (d) the undertaker must co-operate with Network Rail and take any reasonable measures promptly to prevent EMI occurring.

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

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 62.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 72(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 67(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 44 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

**69.** 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 to not adversely affect railway property.

**70.** 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.

**71.** Any additional expenses that Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the date on which this Order is made 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 paid by the undertaker to Network Rail.

**72.—(1)** The undertaker must—

- (a) pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part which may be occasioned to or reasonably incurred by Network Rail—
  - (i) by reason of the construction or maintenance of a specified work or its failure; or
  - (ii) 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 on a specified work;
  - (iii) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst access to or egressing from the authorised development;
  - (iv) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;
  - (v) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

and the undertaker must indemnify Network Rail and keep Network Rail indemnified from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission.

(2) 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 its employees, contractors or agents) excuse the undertaker from any liability under this Part.

(3) Network Rail must give the undertaker reasonable written notice of any claim or demand made against Network Rail that the undertaker may be liable to pay under this Part and no settlement or compromise of such a claim or demand is to be made without the prior written consent of the undertaker.

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

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(5) 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 (1) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (4) 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 train operator under sub-paragraph (5).

(7) In this paragraph—

“relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to 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 sub-paragraph (1).

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

73. Network Rail must, on receipt of a request from the undertaker, 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 (including the amount of the relevant costs mentioned in paragraph 72) and with such information as may enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part (including any claim relating to those relevant costs).

74. In the assessment of any sums payable to Network Rail 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 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 or increasing the sums so payable.

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

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

76. 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.

77. The undertaker must give written notice to Network Rail where any application is proposed to be made by the undertaker for the Secretary of State’s consent under article 6 (benefit of the 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.

**78.** The undertaker must, no later than 28 days from the date that the documents referred to in article 40 (certification of plans etc.) are certified by the Secretary of State, provide a set of those documents to Network Rail in an electronic format.

## PART 7

### For the protection of Rhyl Flats Wind Farm Limited

#### Application

**79.** The provisions of this Part apply for the protection of the Company unless otherwise agreed in writing between the undertaker and the Company.

#### Interpretation

**80.** In this Part—

“apparatus” means the cables, anchors, moorings, vessels, stabilisation systems, structures or other infrastructure owned, occupied or maintained by the Company or its successor in title within the Rhyl Flats Lease Area;

“Company” means Rhyl Flats Wind Farm Limited (company number 05485961) whose registered office is at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB;

“construction” includes execution, placing and relaying, and “construct” and “constructed” must be construed accordingly;

“method statement” means a written statement setting out the methodology for implementation of the specified works including—

- (a) construction methods and programmes;
- (b) vessel handling and positioning systems;
- (c) trenching/cable burial details;
- (d) scour protection and mattress laying;
- (e) securing access by the Company to apparatus throughout the duration of the specified works (subject to paragraph 84 of this Part);
- (f) such further particulars available to it that the Company may reasonably require;

“plans” includes sections, drawings, calculations and details of the specified works including the extent, timing and duration of any proposed occupation of the Rhyl Flats Restriction Zone;

“Rhyl Flats Restriction Zone” means the 250m restriction zone around the perimeter of the Rhyl Flats Lease Area;

“Rhyl Flats Lease Area” means the land leased by the Crown Estate Commissioners to the Company for the operation of the Rhyl Flats Offshore Wind Farm;

“Rhyl Flats Offshore Wind Farm” means the offshore wind farm operated by the Company within the Rhyl Flats Lease Area;

“specified works” means works for the construction, maintenance or replacement of so much of Work No. 2 as is within 250 metres of the perimeter of the Rhyl Flats Lease Area, including survey works.

## Consent for specified works

**81.** Where conditions are included in any consent granted by the Company pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by the Company.

**82.—(1)** The undertaker must not under the powers of this Order carry out any specified works without the consent of the Company, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions (including in relation to co-ordination of works between the undertaker and the Company) and if the Company does not respond within 56 days then consent is deemed to be given.

- (2) Any application for consent pursuant to sub-paragraph (1) must be accompanied by—
  - (a) plans of the specified works;
  - (b) a method statement;
  - (c) such further particulars available to the undertaker that the Company may reasonably require.

(3) Any approval of the Company required under this paragraph may be made subject to such reasonable conditions as may be required for the protection of any apparatus or for the alteration of any apparatus required as a direct consequence of the specified works or for securing access to any apparatus.

(4) Where the Company requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the Company's reasonable satisfaction.

(5) 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 any specified works, new plans or a revised method statement instead of the plans or method statement previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans or method statement.

(6) The specified works must be carried out in accordance with the consent given, or deemed to be given, in terms of sub-paragraph (1).

**83.—(1)** The undertaker must give to the Company not less than 28 days' written notice of its intention to commence the undertaking of the specified works and, not more than 14 days after completion of their implementation, must give the Company written notice of the completion.

(2) The undertaker is not required to comply with paragraph 82 or sub-paragraph (1) in a case of emergency, but in that case it must give to the Company notice as soon as is reasonably practicable and a plan, sections and description of those works as soon as reasonable practicable subsequently and must comply with paragraph 82 in so far as is reasonably practicable in the circumstances.

(3) The Company is entitled to have not more than two representatives present while any specified works are being carried out by the undertaker and the following provisions shall apply to such representatives—

- (a) any representatives must be suitably qualified and must comply with the Marine Labour Convention (2006) standards, guidelines and regulations;
- (b) the representatives may be located on any vessel carrying out specified works and must have full and free access at all times to all activities related to the specified works;
- (c) the undertaker must afford the representatives its full cooperation in the execution of the representatives' duties; and
- (d) the representatives' only function is to safeguard the interests of the Company and they shall have no duty to ensure or procure the doing of anything for the benefit of the

undertaker or to prevent anything which may be to the detriment of the undertaker, provided however that the representatives must act in good faith at all times.

**84.—(1)** The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by the Company to any apparatus unless agreed with the Company and in accordance with any reasonable conditions which may be required by the Company or where required by law or for health and safety reasons.

(2) The undertaker must give to the Company not less than 28 days' written notice of its intention to exercise powers which will prevent or interfere with the access by the Company to any apparatus.

**85.** To ensure its compliance with this Part, the undertaker must before carrying out any specified works and at the undertaker's own cost, carry out all surveys reasonably necessary to confirm the actual position of apparatus unless otherwise agreed with the Company in writing, such agreement not to be unreasonably withheld or delayed. The Company shall provide on request any reasonable assistance required from the Company of the location of any apparatus.

**86.** The undertaker and the Company must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

### **Expenses**

**87.—(1)** Subject to the following provisions of this paragraph, the undertaker must pay to the Company on demand all reasonable charges, costs and expenses reasonably incurred by the Company direct consequence of the execution of any specified works including without limitation in respect of—

- (a) the approval of plans and method statements;
- (b) the carrying out of protective works (including any temporary protective works and their removal);
- (c) the survey of any land, apparatus or works, the inspection and monitoring of any specified works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such specified works referred to in this Part of this Schedule; and
- (d) any additional costs incurred in the decommissioning of Rhyl Flats Offshore Wind Farm as a result of the specified works.

### **Indemnity**

**88.—(1)** Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the carrying out of any specified works authorised by this Part or in consequence of the construction, use, maintenance or failure of any of the authorised development within 250 metres of the perimeter of the Rhyl Flats Lease Area by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out any specified works (including without limitation specified works carried out by the undertaker under this Part), there is any subsidence resulting from any of these specified works, or any damage is caused to any apparatus or property of the Company, or as consequence of the specified works, there is any interruption or reduction in any electricity generated by the Company, or the Company becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from the Company the cost reasonably and properly incurred by the Company in making good such damage or restoring the supply; and

- (b) indemnify the Company for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs reasonably and properly incurred by or recovered from the Company, by reason or in consequence of any such damage or interruption or the Company becoming liable to any third party as aforesaid other than arising from any default by the Company,  
provided that at all times the Company will be under an obligation to take reasonable steps to mitigate its loss.

(2) The fact that any act or thing may have been done by the Company on behalf of the undertaker or in accordance with a plan or method statement approved by the Company or in accordance with any requirement of the Company as a consequence of the carrying out of any specified works or under its supervision does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this paragraph unless the Company fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and the Company.

- (3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—  
(a) any damage or interruption to the extent that it is attributable to the neglect or default of the Company, its officers, employees, contractors or agents;  
(b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) The Company must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand, unless payment is required in connection with a statutory compensation scheme, is to be made without first consulting the undertaker and considering its representation.

(5) The Company must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

## **Arbitration**

**89.** Any dispute arising between the undertaker and the Company under this Part must be determined by arbitration under article 44 (arbitration).

## **PART 8**

### **For the protection of Conwy County Borough Council**

**90.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Conwy County Borough Council.

**91.** In this Part—

“OPNMP” means Offshore Piling Noise Monitoring Plan, being the plan prepared by the undertaker in accordance with the Outline OPNMP and approved by Conwy County Borough Council under this Part.

“Conwy County Borough Council” means a local authority having its principal offices at Bodlondeb, Bangor Road, Conwy LL32 8DU, and any successor in function as local authority under Part 3 of the Environmental Protection Act 1990 for area of Conwy.

“Outline offshore piling noise monitoring plan” or “outline OPNMP” means the document certified as such by the Secretary of State under article 40 for the purposes of this Order.

**92.**—(1) Prior to the commencement of any offshore piling as part of the authorised development the undertaker must submit to, and have approved in writing by Conwy County Borough Council, an OPNMP.

(2) The OPNMP submitted and approved under sub-paragraph (1) must be in accordance with the outline OPNMP.

**93.**—(1) The undertaker may, at any time following approval of an OPNMP under paragraph 92, submit to Conwy County Borough Council for approval a revised OPNMP.

(2) Any revised OPNMP submitted and approved under sub-paragraph (1) must be in accordance with the outline OPNMP.

(3) Any revised OPNMP will not take effect unless and until approved in writing by Conwy County Borough Council.

(4) On the date upon which a revised OPNMP is approved under this paragraph, any other OPNMP previously approved will cease to have effect.

**94.** The authorised development must be carried out in accordance with the OPNMP approved under paragraph 92 or a revised OPNMP approved under paragraph 93.

**95.** The undertaker will give Conwy County Borough Council not less than 7 working days' notice of the anticipated start date for offshore piling works forming part of the authorised development.

**96.** Nothing in any OPNMP may conflict with requirement 4 of Schedule 2 of this Order.

**97.** Any approval required under this Part must not be unreasonably withheld or delayed.

**98.** Any difference or dispute arising between the undertaker and Conwy County Borough Council under this Part must, unless otherwise agreed in writing between the undertaker and Conwy County Borough Council, be determined by arbitration in accordance with article 44 (arbitration).

## PART 9

### For the protection of Wales and West Utilities

**99.** For the protection of Wales and West Utilities as referred to in this part of this Schedule the provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Wales and West Utilities Limited.

**100.** In this Part—

“alternative apparatus” means alternative apparatus adequate to enable Wales and West Utilities to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by Wales and West Utilities for the purposes of gas supply; including any structure in which apparatus is or is to be lodged or which will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include associated development and the use and maintenance of the authorised development;

“functions” includes powers and duties;

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

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

“security infrastructure” includes cameras, perimeter fencing, fencing and gates and any other security measures required in order to ensure an appropriate level of security in respect of the authorised development or any apparatus;

“specified work” means so much of any of the works comprised in the authorised development or activities undertaken in association with the authorised development which:

- (a) are in, on or under any land purchased, leased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which is not required under paragraph 104 of this Schedule; and/or
- (b) will or may be situated within 4 metres measured in any direction of any security infrastructure belonging to or maintained by Wales and West Utilities;

“Wales and West Utilities” means Wales and West Utilities Limited (Company No. 05046791) whose registered office is at Wales & West House, Spooner Close Coedkernew, Newport, South Wales, NP10 8FZ.

### **On street apparatus and offshore works**

**101.** This Part does not apply to—

- (a) apparatus in respect of which the relations between the undertaker and Wales and West Utilities are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) the offshore works.

### **Apparatus in streets subject to temporary restriction**

**102.** Regardless of the temporary restriction of use of streets under the powers conferred by article 12 (temporary restriction of use of streets), Wales and West Utilities is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the restriction was in that street.

### **Acquisition of land**

**103.** Regardless of any provision of this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement of Wales and West Utilities.

### **Removal of apparatus**

**104.—(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 over which access to any apparatus is enjoyed or requires that Wales and West Utilities’ apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Wales and West Utilities.

**(2)** If, for the purpose of executing any works in, on or under any land purchased, leased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give Wales and West Utilities at least 28 days’ 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 Wales and West Utilities reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (4), afford to Wales and West Utilities 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, Wales and West Utilities must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable 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 must be constructed in such manner and in such line or situation as may be agreed between Wales and West Utilities and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(5) Wales and West Utilities must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44 (arbitration), and after the grant to Wales and West Utilities 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.

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

**105.**—(1) Where, in accordance with the provisions of this Part, the undertaker affords to Wales and West Utilities 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 Wales and West Utilities or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Wales and West Utilities 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 Wales and West Utilities as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

**106.**—(1) Not less than 42 days before starting the execution of any specified works in, on or under any land purchased, held, leased, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 104(2), the undertaker must submit to Wales and West Utilities 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 Wales and West Utilities for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Wales and West Utilities is entitled to watch and inspect the execution of those works.

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

(3) Any requirements made by Wales and West Utilities under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section and description under sub-paragraph (1) is submitted to it.

(4) If Wales and West Utilities, 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, the provisions of this Part apply as if the removal of the apparatus had been required by the undertaker under paragraph 104(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan, 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 Wales and West Utilities 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

**107.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Wales and West Utilities the reasonable expenses reasonably incurred by Wales and West Utilities in, or in connection with, the inspection, removal, alteration or protection of any apparatus or security infrastructure or the construction of any new apparatus or security infrastructure which may be required in consequence of the execution of any such works as are referred to in paragraph 104(2) or any specified work.

(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 and provided that the change is not required by industry standard guidance or legislation—

- (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 44 (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 Wales and West Utilities by virtue of sub-paragraph (1) will be reduced by the amount of that excess.

**108.**—(1) Subject to sub-paragraph (2) and (3) if by reason or in consequence of the construction of any such works referred to in paragraph 104(2) or 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 Wales and West Utilities, or there is any interruption in any service provided, or in the supply of any goods, by Wales and West Utilities, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Wales and West Utilities in making good such damage or restoring the supply; and
  - (b) make reasonable compensation to Wales and West Utilities for any other expenses, loss, damages, penalty or costs incurred by Wales and West Utilities,
- 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 Wales and West Utilities, its officers, servants, contractors or agents.

(3) Wales and West Utilities must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand must be made, unless payment is required in connection with a statutory compensation scheme, without first consulting the undertaker and considering its representations.

### **Enactments and agreements**

**109.** Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and Wales and West Utilities in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

## **PART 10**

### For the protection of Welsh Ministers as Strategic Highway Authority

#### **Application**

**110.** The provisions of this Part have effect for the protection of the Welsh Ministers (“the WM”) as the Highway Authority for the A55, in addition to all other applicable statutory protections, unless otherwise agreed in writing between the undertaker and the WM.

#### **Interpretation**

**111.** In this Part—

“strategic highway” means any part of the highway network including trunk roads or special roads which the WM are responsible for;

“NMWTRA” means the North and Mid Wales Trunk Road Agency, who act as the highway agents of the WM and exercise functions relating to the management and operation of the relevant part of the strategic highway on behalf of the WM pursuant to an agreement between the WM and Gwynedd Council under section 6 of the Highways Act 1980. In practice therefore, the procedural matters contained in this Part will be dealt with by NMWTRA on behalf of the WM; and

“works” means—

- (a) that part of Work No. 23 which requires the trenchless installation of the cable under the A55 highway; or
- (b) any other work forming part of the authorised development within or which affects or requires occupation of the strategic highway.

## Approvals

**112.** The crossing of the A55 and its associated assets must only be carried out by trenchless techniques.

**113.—(1)** Prior to the commencement of the works the undertaker must obtain the written approval of the WM to such works.

(2) When requesting approval under sub-paragraph (1), the undertaker must submit to the WM:

- (a) Copy of location plan to a scale not less than 1/10,000 showing the location and/or proposed route and siting of the works;
- (b) Details of the methodology of the works;
- (c) Details of the proposed timing of the works;
- (d) Details of any traffic management measures (including signage) proposed in connection with the works; and
- (e) Where approval is sought for works to or within the carriageway of a strategic highway, evidence of NHSS (National Highways Sector Scheme) certification and Street Works Qualifications.

**114.** No crossing is to take place until a monitoring regime and the Geotechnical Design Report (GDR as defined by the DMRB CD622 Managing Geotechnical Risk) is agreed and certified by the WM.

**115.** Approval under this Part may be sought in one or more applications.

**116.** Any approval of the WM under this Part may be given subject to such reasonable requirements or conditions as the WM may determine.

**117.** The undertaker must contact any owners or operators of apparatus in, on, over, under or near the strategic highway including other statutory undertakers to ascertain whether their existing or proposed apparatus to within or under the strategic highway is likely to be affected by the works. The undertaker must comply with the requirements and conditions imposed by the owners or operators relating to the protection of existing apparatus in, on, over, under or near the strategic highway likely to be affected by the works.

**118.** The undertaker must pay a fee of £250 to the WM with any application for approval under this Part.

## Indemnity

**119.** The undertaker indemnifies the WM against any and all claims in respect of injury, damage or loss arising out of—

- (a) the placing or presence in the strategic highway of apparatus as part of the works; or
- (b) the excavation by any person of any works within the strategic highway.

**120.** The undertaker (or any person carrying out works on its behalf) must have and maintain in force for the duration of any works to or within the strategic highway network, public liability/third party insurance to the sum of £10 million covering its liability under paragraph 119. The undertaker must provide evidence of such insurance to the WM if requested.

## Traffic management

**121.** The undertaker must contact the NMWTRA, the WM RA Control Room, North Wales Traffic Management Centre, Ffordd Sam Parri, Morfa, Conwy, LL32 8HH – Telephone number

01492 564790 before erecting or removal of traffic management measures on the strategic highway on each occasion that erection or removal is required.

**122.** The undertaker must execute the works in strict accordance with the requirements contained in Chapter 8 of the Traffic Signs Manual (2009) as published by Her Majesty's Stationery Office HMSO and any amendments thereof.

### **Inspections**

**123.** The WM or any person authorised by them for this purpose is entitled to inspect any works to, within or under the strategic highway while such works are being carried out and following completion of such works.

**124.** Exercise of the right to inspect under paragraph 123 must be carried out reasonably, in compliance with any requirements of any health and safety requirements in place within the site of any works, and in accordance with the instructions of the undertaker.

**125.** If required by the WM, the undertaker must provide link boxes (on land outside the limits of the highway) for the purpose of inspecting and maintaining the apparatus under the highway.

**126.—(1)** The undertaker must compensate the WM in respect of any loss, damage, charge, cost or expense suffered or incurred by the WM as a result of the execution, use or maintenance of the works.

(2) Nothing sub-paragraph (1) imposes any liability on the undertaker with respect of any damage to the extent that it is attributable to the act, neglect or default of WM, its officers, employees, contractors or agents.

### **Reinstatement**

**127.** Any reinstatement of the strategic highway required in connection with or as a consequence of the works must be carried out in strict conformity with the Code of Practice "Specification for the Reinstatement of Openings in Highways".

**128.—(1)** Where, in the reasonable opinion of the WM, any reinstatement carried out by the undertaker is defective, three defect inspections will be carried out comprising:

(a) A joint inspection by the WM and the undertaker to determine the nature of the failure and what remedial works need to be carried out;

(b) Inspection by or on behalf of the WM of remedial works in progress; and

(c) Inspection by or on behalf of the WM when remedial works have been completed.

(2) The undertaker must pay an inspection fee of £47.50 for each inspection carried out under this paragraph.

**129.** Any and all costs associated with the reinstatement work will be met by the undertaker.

### **Notice of completion of Works**

**130.** The undertaker must notify the WM of the completion of works approved by the WM under this Part within 10 working days of such completion.

**131.** The undertaker must supply the WM with as built records of any apparatus sited within or under the strategic highway within 10 working days of the completion of works, including, in particular, the location and depth of any electrical cables on a plan to a scale of 1/500 with a longitudinal and vertical accuracy of + or - 100mm.

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

**132.** The undertaker must submit a Geotechnical Feedback Report (GFR as defined in the DMRB CD622 Managing Geotechnical Risk) including all monitoring results and as built drawings to the WM no later than six months from the date of completion.

**133.** After the apparatus has been placed, the undertaker must not carry out any further works or maintenance to the apparatus or works or any other works involving excavation within the boundaries of the strategic highway without the prior written approval of the WM, and any such works must be carried out and completed to the satisfaction of WM.

### **Arbitration**

**134.** Any difference or dispute arising between the undertaker and the WM under this Part must, unless otherwise agreed in writing between the undertaker and the WM, be determined by arbitration in accordance with article 44 (arbitration).

### **Notices**

**135.** The plans submitted to the WM by the undertaker pursuant to this Part must be submitted to North & Mid Wales Trunk Road Agent, Unit 5 Llys Britannia, Parc Menai, Bangor, Gwynedd, LL57 4BN and [streetworks@nmwtra.org.uk](mailto:streetworks@nmwtra.org.uk) or such other address as the WM may from time to time appoint instead for that purpose and notify to the undertaker in writing.

### **Cease of Use or Abandonment**

**136.** If the undertaker proposes to cease using or abandon the apparatus prior to the decommissioning of the onshore works or to part with his interest in the apparatus, the undertaker must give the WM at least 6 weeks' notice before doing so.

**137.** If the apparatus is abandoned or the consent is surrendered prior to the decommissioning of the onshore works, the WM may remove the apparatus or alter it in such a manner as they think fit and reinstate the street and may recover from the undertaker the expenses incurred in so doing, except that if the WM is satisfied that the undertaker can within such reasonable time as the WM specify, remove the apparatus or alter it in such manner as the WM require and reinstate the street, the WM may authorise the undertaker to do so at his own expense.

**138.** If the undertaker proposes to part with his interest in the apparatus, he must before doing so, give notice to the WM stating to whom the benefit of the consent is to be transferred. The consent must be registered against the street in which the apparatus is installed so that the consent and responsibility transfers to the new owner(s) of the apparatus.

### **Maintenance**

**139.** The undertaker must maintain the apparatus in a good state of repair and condition. The undertaker must if required place and maintain within the limits of the said highway suitable permanent signs of a type and in positions to be approved by the WM for the purpose of indicating as nearly as possible the exact position under the highway in which the said apparatus is laid.

## PART 11

### For the protection of North Hoyle Wind Farm Limited

#### Application

**140.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and North Hoyle Wind Farm Limited.

#### Interpretation

**141.** In this part—

“Company” means North Hoyle Wind Farm Limited (company number 02904841) whose registered address is at 5th Floor, 20 Fenchurch Street. London, England, EC3M 3BY;

“Company cables” means the export cables leading from North Hoyle wind farm to their onshore grid connection;

“crossing points” means the points at which the Company cables and the undertaker cables cross each other;

“force majeure event” means any cause beyond the reasonable control of the undertaker, and which the undertaker by the exercise of reasonable diligence is unable to prevent, avoid or remove, and in relation to which the undertaker has exercised and is exercising the standard of a reasonable and prudent operator provided that a lack of funds does not constitute a force majeure event;

“method statement” means such designs, details and procedures for performance of the specified work as are sufficient to enable the Company (acting reasonably) to satisfy itself as to the safety and security of the Company cables and the technical adequacy of the specified work, such designs, details and procedures must as a minimum include—

- (a) construction methods and programmes;
- (b) vessel handling and positioning systems;
- (c) stabilisation details;
- (d) details of the vertical and horizontal separation between the Company cables and the undertaker cables;
- (e) details of the proposed protection measures for the Company cables and provision of such protective works (whether temporary or permanent) as the Company may reasonably require for the safety and operation of the Company cables;
- (f) the proposed timetable for the work;
- (g) location, layout and profile of the crossing of the Company cables by the undertaker cables;
- (h) specification of the installation equipment;
- (i) inspection and safety methods; and
- (j) trenching/cable burial details;

“North Hoyle wind farm” means the offshore wind farm operated by the Company to the north east of Work No. 2, the location of which is shown on Sheet No. 2 of the works plans;

“specified work” means works for the construction of so much of Work No. 2 as is within 250 metres of the Company cables or any operation required to re-lay, maintain, renew or remove the undertaker cables within 250 metres of the Company cables if such work becomes

necessary for any reason, including survey works (other than survey works that do not involve physical interaction with the seabed);

“standard of a reasonable and prudent operator” means seeking in good faith to perform its contractual obligations, and in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and complying with applicable law; and “undertaker cables” means the subsea cable circuits to be installed by the undertaker as part of Work No. 2.

#### **Requirement for approval of method statement and surveys**

**142.** The undertaker must at least 3 months before commencing construction of any specified work supply to the Company a method statement for the reasonable approval of the Company and the specified work must not be commenced or undertaken except in accordance with such method statement as has been approved in writing by the Company, such approval not to be unreasonably withheld or delayed, settled by arbitration under article 44 (arbitration) or as may be agreed to be varied from time to time, such agreement not to be unreasonably withheld or delayed.

**143.** If by the expiry of 28 days, beginning on the date on which the method statement was supplied to the Company under paragraph 142, the Company has not communicated approval or disapproval, the Company is deemed to have approved the method statement as supplied.

**144.** The undertaker must, at its own cost, carry out all surveys reasonably necessary to confirm the actual position of the Company cables prior to the commencement of any specified work unless otherwise agreed with the Company in writing, such agreement not to be unreasonably withheld or delayed provided that—

- (a) The Company must provide on request, any reasonable assistance in locating the Company cables which must include provision of any as-laid/post-installation survey data relating to the Company cables in the possession and/or control of the Company; and
- (b) If, following the provision of such reasonable assistance, the position of the Company cables has not been identified by the undertaker, the Company and the undertaker must discuss and use all reasonable endeavours to agree upon a suitable method for carrying out the specified work.

**145.** In granting its approval (or deemed approval) of the method statement the Company is not under any duty to ensure the accuracy, correctness or completeness of the method statement. Approval (or deemed approval) of the method statement by the Company does not release the undertaker from any obligation or liability and is not as between the undertaker and the Company capable of amounting to negligence or contributory negligence on the part of the Company in the event of any claim or proceedings arising out of or in connection with the specified work unless the loss, damage or expense giving rise to such claim or proceeding is caused by the neglect or default of the Company, its officers, employees, contractors or agents.

**146.** The undertaker must use all reasonable endeavours to ensure the route of the undertaker cables is designed to cross the Company cables at a horizontal angle which is as close as possible to a right angle as is practicable having due regard to other route requirements.

#### **Requirement for notification of start of works**

**147.—(1)** The undertaker must give the Company no less than 15 working days’ written notice of its intention to carry out any specified work providing—

- (a) the nature of the specified work; and

(b) the anticipated dates of commencement and completion of the specified work.

(2) In the event of the specified work not being commenced within 15 working days of the anticipated date of commencement as notified by the undertaker pursuant to sub-paragraph (1) the undertaker must re-notify the information referred to in sub-paragraph (1).

### **Carrying out of works**

**148.** The undertaker must allow the Company all access to the Company cables as may be reasonably required by the Company for the purposes of maintenance when carrying out any specified work.

**149.** The undertaker must ensure that the specified work are carried out with all reasonable skill and care, in accordance with all relevant statutory obligations and in accordance with the method statement for the specified work approved in accordance with paragraph 3 or deemed approved under paragraph 4 or such alternative designs, details and procedures which the undertaker may propose and the Company may accept from time to time at its sole discretion.

**150.** Any contractor and/or subcontractor used by the undertaker for the purpose of the specified work must be suitably qualified and experienced in carrying out the type of work for which it is engaged. The undertaker must take and procure that its contractors and/or subcontractors take all such measures as ought reasonably to be taken in accordance with the standard of a reasonable and prudent operator to avoid the risk of damage to the Company cables.

**151.** Either during the installation or as soon as practicable after the installation of the undertaker cables, the crossing points must be inspected by the undertaker or on its behalf, at the undertaker's expense, by means of a remotely operated vehicle or by divers or such other method reasonably agreed by the Company, to ascertain that the undertaker cables and the Company cables have the agreed vertical separation distance at the crossing points in accordance with the method statement approved in accordance with paragraph 3 or deemed approved under paragraph 4. In the event that the undertaker cables and the Company cables have been adequately vertically separated then the undertaker must consult with the Company to determine the most appropriate course of action and the undertaker must, at its own expense then rectify the situation to provide such vertical separation.

**152.** The undertaker must provide the Company with the actual as-laid route of the undertaker cables in the vicinity of the Company cables by—

- (a) provision of co-ordinates of the crossing points within 48 hours after completion of installation of the undertaker cables within a 250 metre radius from the crossing points; and
- (b) provision of charted information of the crossing points as soon as practicable after the completion of the installation of the undertaker cables.

**153.** The undertaker must ensure that the risk of dropped object, anchoring, grounding, vessel drift-off, impact from jack-up legs etc. is to be adequately assessed and precautions taken to minimise such risks as far as reasonably possible.

### **Future specified work**

**154.** Following the installation of the undertaker cables, the undertaker must use all reasonable endeavours to consult the Company in good faith regarding any future specified work which may be required to the undertaker cables. The undertaker and Company must work together to accommodate any such future specified work if this is required and must use all reasonable endeavours to agree the timings and methods for any future specified work to be undertaken, such agreement not to be unreasonably withheld or delayed by the Company.

**155.** Notwithstanding the provisions of paragraph 15, if any future specified work is required which is of an urgent or emergency nature, the Company and the undertaker must use all reasonable

endeavours to undertake such work in an expeditious manner and must work together in good faith to enable such future specified work to be undertaken as required and the undertaker must give the Company as much written notice as is reasonably possible in light of the emergency or urgency before undertaking such future specified work (including all relevant details of the proposed future specified work).

**156.** Subject to paragraphs 15 and 16, where the undertaker requires to carry out any future specified work then the undertaker must—

- (a) provide the Company with not less than 1 calendar month notification of its intention to carry out any such future specified work;
- (b) provide the Company with all such reasonable information concerning the future specified work and the procedures for the conduct of the future specified work as the Company may reasonably require and the provisions of paragraphs 3 to 14 must apply to any such future specified work mutatis mutandis except that—
  - (i) the time period for providing a method statement under paragraph 3 must be 1 calendar month prior to the commencement of the future specified work;
  - (ii) the time period for approving a method statement under paragraph 4 must be 15 working days;
  - (iii) the time period for advising the anticipated dates of commencement and completion of the future specified work under paragraph 8 must be 10 working days.

### **Works on Company cables**

**157.—(1)** Subject to sub-paragraphs (2) and (3), the Company is entitled, at the Company's expense, to carry out any operation required to re-lay, maintain, renew or remove the Company cables within 250 metres of the undertaker cables if such work becomes necessary for any reason.

(2) When the Company proposes to undertake work under sub-paragraph (1) they must follow the procedure set out in paragraphs 15 to 17 which applies with the following modifications to the relevant paragraphs and defined terms—

- (a) the references to "the undertaker" must be read as references to "the Company";
- (b) the references to "the Company" must be read as references to "the undertaker"; and
- (c) the references to "future specified work" must be read as "work permitted under paragraph 18".

(3) When the Company undertakes work under sub-paragraph (1) they are subject to paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 which applies with the following modifications to the relevant paragraphs and defined terms—

- (a) the references to the "undertaker" must be read as referenced to "the Company";
- (b) the references to "the Company" must be read as references to "the undertaker";
- (c) the references to "undertaker cables" must be read as references to "Company cables";
- (d) the references to "Company cables" must be read as references to "undertaker cables"; and
- (e) the references to "specified work" must be read as "work permitted under paragraph 18".

### **Restrictions on anchors and moorings**

**158.** The undertaker must not deploy anchors or other ground mooring equipment within 250 metres of the Company cables unless in accordance with DNV Standards or otherwise except on obtaining, for those anchors or ground mooring equipment, written agreement of the Company (or the written agreement of representative of the Company supervising the work in terms of paragraph 25).

## Indemnity and liabilities

**159.**—(1) Subject to sub-paragraphs (2), (3) and (4), if by reason or in consequence of the carrying out of any specified work any damage is caused to any apparatus or property of the Company or there is any interruption or reduction in any electricity supply by the Company or the Company becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand accompanied by an invoice or claim from the Company the cost reasonably and properly incurred by the Company in making good such damage or restoring the supply;
- (b) indemnify the Company for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs reasonably and properly incurred by or recovered from the Company by reason or in consequence of any such damage, interruption or reduction or the Company becoming liable to any third party as aforesaid other than arising from any default by the Company; and
- (c) indemnify the Company for any and all claims, proceedings, damages (whether in contract or tort), costs (including reasonable legal costs), demands, liabilities, or expenses incurred by the Company which arises out of or in connection with any pollution caused by or which arises out of any specified work carried out by or on behalf of the undertaker,

provided that at all times the Company will be under an obligation to take reasonable steps to mitigate its loss.

(2) The fact that any act or thing may have been done by the Company on behalf of the undertaker or in accordance with a plan or method statement approved by the Company or in accordance with any requirement of the Company or as a consequence of carrying out any of the specified work under its supervision does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this paragraph where the undertaker fails to carry out and execute the specified work properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved method statement (or as otherwise agreed between the undertaker and the Company).

- (3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—
  - (a) any damage or interruption to the extent that it is attributable to the neglect or default of the Company, its officers, employees, contractors or agents;
  - (b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

**160.** The Company must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand, unless payment is required in connection with a statutory compensation scheme, is to be made without first consulting the undertaker and considering its representation.

**161.** The undertaker is responsible for the recovery or removal and when appropriate the marking or lighting of any wreck or debris arising from or relating to or in connection with carrying out any part of the specified work when required by—

- (a) any applicable law or governmental authority;
- (b) any applicable consent or third party agreement that the Company is subject and/or a party to; or
- (c) where such wreck or debris is interfering with the Company's operations or is a hazard to fishing or navigation,

and must be liable for, and must indemnify and hold harmless the Company, from and against any and all claims, proceedings, damages (whether in contract or tort), costs (including reasonable legal

costs), demands, liabilities, or expenses incurred by the Company which arises out of or in connection with any such wreck or debris, whether or not the negligence or breach of duty (whether statutory or otherwise) of the Company contributed to such wreck or debris.

**162.**—(1) In the event of the undertaker being liable for damage to the Company cables, the Company may at its discretion either—

- (a) require the undertaker to repair the damage; or
- (b) carry out the repair work itself.

(2) Should the Company elect to carry out the repair work itself, the Company must use all reasonable endeavours to minimise costs and must take all reasonable action to repair the Company cables as soon as practicable. The repairs must be effected with due regard to the technical requirements of the Company cables and nothing in this paragraph must oblige the Company to accept a standard of repair that would adversely affect the technical performance of the affected cable.

**163.** In the event of the undertaker being liable for damage to the Company cables, the Company must use all reasonable endeavours to notify the undertaker of the existence of the damage to the Company cables as soon as practicable after the existence of such damage is known.

**164.** The undertaker must use reasonable endeavours to procure that any policies of insurance of the undertaker must contain waiver of subrogation rights which reflect the provisions of this Part.

## Representatives

**165.** The Company is entitled to have not more than 2 representatives present while any specified work is being carried out by the undertaker whose role must be as follows—

- (a) any cost and logistics associated with onboarding and the services of the Company representatives shall be covered by the undertaker;
- (b) any representatives must be suitably qualified and experienced and must comply with the Maritime Labour Convention 2006 Regulations;
- (c) the Representatives may be located on any vessel carrying out the specified work and must have full and free access at all times to all activities related to the specified work;
- (d) the undertaker must afford the representatives its full cooperation in the execution of the representative's duties under this paragraph; and
- (e) the representatives only function is to safeguard the interests of the Company and he/she/they have no duty to ensure or procure the doing of anything for the benefit of undertaker or to prevent anything which may be to the detriment of the undertaker respectively, provided however that the representatives must act in good faith at all times.

## Insurance

**166.** The undertaker must arrange insurance as follows—

- (a) the undertaker must at all times when carrying out specified work, insure at its own cost for its liability under paragraphs 20 and 21 for the sum of twenty million euros (€20,000,000) for any one incident (or series of connected incidents) and forty million euros (€40,000,000) in total for any incident or series of incidents, related or unrelated, in any 12 month period;
- (b) all such policies of insurance must be placed with an insurance office approved to do business in Germany or the United Kingdom; and

- (c) the undertaker must provide the Company with evidence of that such insurance is in place (via a brokers' confirmation or similar) as may be reasonably requested by the Company from time to time.

### **Force majeure**

**167.** The undertaker must not be responsible for any failure to fulfil any paragraph of this Part if and to the extent that fulfilment has been delayed or temporarily prevented by a force majeure event which has been notified in accordance with the following provisions—

- (a) in the event of a force majeure event, the undertaker must notify the Company as soon as practicable and in any event not later than 10 working days after the undertaker became aware of the event or circumstance giving the full particulars thereof and must use all reasonable endeavours to remedy the situation without delay;
- (b) following notification of a force majeure event in accordance with sub-paragraph (1) (b), the undertaker and the Company must meet without delay (and thereafter at regular intervals) to discuss the effect of the force majeure event with a view to agreeing a mutually acceptable course of action to minimise any effects of such occurrence;
- (c) the undertaker must at all times use all reasonable endeavours to avoid, overcome and minimise any delay in the performance of this Part as a result of any force majeure event; and
- (d) if the undertaker is affected by force majeure event whilst any of its vessels or equipment are engaged in the performance of a specified work it must ensure that all reasonable steps are taken to ensure the protection of the Company cables from damage and must immediately notify the Company of any such steps taken.
- (e) The undertaker must give notice to the Company when it ceases to be affected by the force majeure event and must as soon as reasonably possible after the cessation of the force majeure event resume performance of its obligations under this Part.

### **Costs and expenses**

**168.** The undertaker must pay the Company on demand all reasonable charges, costs and expenses incurred by the Company in direct consequence of any specified work carried out by the undertaker under this Part including without limitation—

- (a) the approval of method statements;
- (b) the carrying out of protective works (including any temporary protective works and their removal);
- (c) the supervision or monitoring of any specified work by the undertaker including the cost of appointing representatives in terms of paragraph 25; and
- (d) 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 specified work.

### **Arbitration**

**169.** Any dispute arising between the undertaker and the Company under this Part must be determined by arbitration under article 44 (arbitration).