

SCHEDULE 9

Article 25

Protective provisions

PART 1

Protection for electricity, gas, water and sewerage undertakers

1. For the protection of the undertakers referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertakers and the affected undertaking concerned, have effect.

2. In this part of this Schedule—

“affected undertakers” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989⁽¹⁾;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽²⁾;
- (c) a water undertakers within the meaning of the Water Industry Act 1991⁽³⁾; and
- (d) a sewerage undertakers within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the undertakers to whom it belongs or by whom it is maintained;

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

“apparatus” means—

- (a) in the case of an electricity undertakers, electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by that affected undertakers;
- (b) in the case of a gas undertakers, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertakers, mains, pipes or other apparatus belonging to or maintained by that affected undertakers for the purposes of water supply; and
- (d) in the case of a sewerage undertakers—
 - (i) any drain or works vested in the affected undertakers under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 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; and

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

(1) 1989 c.29. Section 64(1) was amended by section 108 and paragraphs 24, 38(1), (3) of Part II of Schedule 6 of the Utilities Act 2000.

(2) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

(3) 1991 c.56.

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

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

5.—(1) If, in the exercise of the powers conferred by this Order, the undertakers acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this part of this Schedule and any right of an affected undertakers to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the affected undertakers in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertakers requires the removal of any apparatus placed in that land, it shall give to the affected undertakers in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an affected undertakers reasonably needs to remove any of its apparatus) the undertakers shall, subject to sub-paragraph (3), afford to the affected undertakers the necessary facilities and rights for the construction of alternative apparatus in other land of the undertakers 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 undertakers, or the undertakers 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 affected undertakers in question shall, on receipt of a written notice to that effect from the undertakers, as soon as reasonably possible use all 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 undertakers under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the affected undertakers in question and the undertakers or in default of agreement settled by arbitration in accordance with article 33 (arbitration).

(5) The affected undertakers in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 33 (arbitration), and after the grant to the affected undertakers 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 undertakers to be removed under the provisions of this part of this Schedule.

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

(7) Nothing in sub-paragraph (6) shall authorise the undertakers 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.

6.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertakers affords to an affected undertakers facilities and rights for the construction and maintenance in land of the undertakers of alternative apparatus in substitution for apparatus to be removed, those

facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertakers and the affected undertakers in question or in default of agreement settled by arbitration in accordance with article 33 (arbitration).

(2) If the facilities and rights to be afforded by the undertakers 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 affected undertakers 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 shall make such provision for the payment of compensation by the undertakers to that affected undertakers as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertakers under paragraph 5(2), the undertakers shall submit to the affected undertakers in question a plan, section and description of the works to be executed.

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

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

(4) If an affected undertakers in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertakers, reasonably requires the removal of any apparatus and gives written notice to the undertakers of that requirement, paragraphs 1 to 6 shall apply as if the removal of the apparatus had been required by the undertakers under paragraph 5(2).

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

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

8.—(1) Subject to the following provisions of this paragraph, the undertakers shall repay to an affected undertakers the reasonable expenses incurred by that affected undertakers in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) There shall 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, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

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- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertakers or, in default of agreement, is not determined by arbitration in accordance with article 33 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertakers in question by virtue of sub-paragraph (1) shall 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 shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an affected undertakers in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the affected undertakers 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.

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 an affected undertakers, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertakers, the undertakers shall—

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

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

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

(3) An affected undertakers shall give the undertakers reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertakers which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

10. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertakers and an affected undertakers in respect of any apparatus laid or erected in land belonging to the undertakers on the date on which this Order is made.

PART 2

Protection for operators of electronic communications code networks

1.—(1) For the protection of any operator, the following provisions shall, unless otherwise agreed in writing between the undertakers and the operator, have effect.

(2) In this part of this Schedule—

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

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(4);

“electronic communications code network” means—

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

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

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

2. The exercise of the powers of article 25 (statutory undertakers) are subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(5).

3.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator, the undertakers shall bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and shall—
 - (i) make reasonable compensation to an operator for loss sustained by it; and
 - (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall impose any liability on the undertakers 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 shall give the undertakers reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand shall be made without the consent of the undertakers which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) See section 106.

(5) 1984 c.12.

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(4) Any difference arising between the undertakers and the operator under this paragraph shall be referred to and settled by arbitration under article 33 (arbitration).

4. This part of this Schedule does not apply to—

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

5. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertakers and an operator in respect of any apparatus laid or erected in land belonging to the undertakers on the date on which this Order is made.

PART 3

Protection of Network Rail Infrastructure Limited

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

2. In this part of this Schedule—

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

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

“network licence” means the network licence, as 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⁽⁶⁾;

“Network Rail” means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at Kings Place, 90 York Way, London, N1 9AG and any associated company of Network Rail 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⁽⁷⁾) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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

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

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

⁽⁶⁾ 1993 c.43.

⁽⁷⁾ 2006 c.46.

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

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

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

- (a) co-operate with the undertakers 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 development under this Order.

4.—(1) The undertakers must not exercise the powers conferred by article 14 (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act (powers of entry) in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertakers 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 undertakers shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers and electronic code communications operators: preliminary notices), or article 25 (statutory undertakers), 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 undertakers must not under the powers conferred by 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) Where Network Rail is asked to give its consent or agreement pursuant to this paragraph, such consent or agreement must not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The undertakers 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 shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 33 (arbitration).

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

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertakers that Network Rail desires itself to construct any part of a specified work which in the opinion of

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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 undertakers desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertakers 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 undertakers.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail or by the undertakers, if Network Rail so desires, and such protective works shall be carried out at the expense of the undertakers in either case with all reasonable dispatch and the undertakers shall not commence the construction of the specified works until the engineer has notified the undertakers that the protective works have been completed to the engineer's reasonable satisfaction.

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

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the undertakers must, regardless of any approval described in paragraph 6(1)(a), make good such damage and shall 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 Schedule imposes any liability on the undertakers with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertakers or its servants, contractors or agents.

7. The undertakers must—

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

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

9.—(1) If any permanent or temporary alterations or additions to railway property, or to any protective works under paragraph 5(4), are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail or the services of operators using the same, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertakers reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertakers must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertakers, Network Rail gives notice to the undertakers that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertakers 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 undertakers must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

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

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

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

- (a) in constructing any part of a specified work on behalf of the undertakers as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertakers and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

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

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

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertakers 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 undertakers 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 undertakers’s compliance with sub-paragraph (3)—

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

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

(6) If at any time prior to the commencement of commercial operation of the authorised development and regardless of any measures adopted under to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertakers shall 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 undertakers’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 undertakers must afford reasonable facilities to Network Rail for access to the undertakers’s apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertakers for access to Network Rail’s apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertakers any additional material information in its possession reasonably requested by the undertakers in respect of Network Rail’s apparatus or such EMI.

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

- (a) Network Rail must allow the undertakers 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 undertakers in accordance with paragraph 6.

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

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

(11) In relation to any dispute arising under this paragraph the reference in article 33 (arbitration) to an arbitrator to be agreed shall be read as a reference to an arbitrator being a member of the Institution of Electrical Engineers.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertakers 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 undertakers must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

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

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

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

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertakers or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

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

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(2) Network Rail must give the undertakers reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertakers, such consent not to be unreasonably withheld.

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

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

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

(6) In this paragraph—

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

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

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

17. In the assessment of any sums payable to Network Rail under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertakers under this Schedule or increasing the sums so payable.

18. The undertakers 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 undertakers of—

- (a) any railway property shown on the works and 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.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993.

20. The undertakers must give written notice to Network Rail where any application is proposed to be made by the undertakers for the Secretary of State’s consent under article 5 (benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The undertakers must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 32 (certification of plans etc.), provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

PART 4

For the protection of Anglian Water Services Limited

1. For the protection of Anglian Water, the following provisions of this Schedule shall, unless otherwise agreed in writing between the undertakers and Anglian Water, have effect.

2. In this part of this Schedule—

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

“Anglian Water” means Anglian Water Services Limited;

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

(a) any drain or works vested in Anglian Water under the Water Industry Act 1991,

(b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102 (4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

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

3. The undertakers shall not interfere with, build over or near to any Apparatus within the Order land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling, the following distances to either side of the medial line of any Apparatus—

2.25 metres where the diameter of the pipe is less than 150 millimetres

3 metres where the diameter of the pipe is between 150 and 450 millimetres

4.5 metres where the diameter of the pipe is between 450 and 750 millimetres

6 metres where the diameter of the pipe exceeds 750 millimetres;

unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertakers.

4. The alteration, extension, removal or re-location of any Apparatus shall not be implemented until—

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- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2010 or other legislations and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals or agreement from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertakers has made the appropriate application required under the Water Industry Act 1991 together with a plan and description of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water without delay for the alteration or otherwise for the protection of the Apparatus, or for securing access to it.

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

6. Regardless of any provision in this Order or anything shown on any plan, the undertakers must not acquire any Apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its Apparatus in the Order land, the undertakers shall, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the Apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 33 (arbitration).

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

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

9. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 4 to 6 and 8 any damage is caused to any Apparatus (other than Apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertakers shall—

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

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

10. Nothing in paragraph 9 shall impose any liability on the undertakers with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Anglian Water, its officer, servants, contractors or agents.

11. Any difference or dispute arising between the undertakers and Anglian Water under this Schedule shall, unless otherwise agreed in writing between the undertakers and Anglian Water, be determined by arbitration in accordance with article 33 (arbitration).

PART 5

For the protection of National Grid Gas plc and National Grid Electricity Transmission plc

Application

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

Interpretation

2. In this Part of this Schedule—

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

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

“apparatus” means—

- (a) in the case of an electricity undertakers, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that undertakers;
- (b) in the case of a gas undertakers, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

“commence” has the same meaning as article 2 of this Order;

“functions” includes powers and duties;

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

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

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

“statutory undertakers” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989; and
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) for the area of the authorised development, and in relation to any apparatus, means the statutory undertakers to whom it belongs or by whom it is maintained;

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

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Apparatus of undertakers in stopped up streets

3. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 10 (temporary stopping up of streets), a statutory undertakers shall be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway subject always to the undertaking of works by the undertakers authorised by this Order.

Acquisition of land

4. 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 undertakers shall not acquire any interest in land or any apparatus or override any easement or other interest of the statutory undertakers otherwise than by agreement, such agreement not to be unreasonably withheld or delayed.

Removal of apparatus

5.—(1) If, in the exercise of the agreement reached in accordance with paragraph 4 or in any other authorised manner, the undertakers acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this part of this Schedule and any right of a statutory undertakers to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the statutory undertakers in question in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertakers requires the removal of any apparatus placed in that land, it shall give to the statutory undertakers in question 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a statutory undertakers reasonably needs to remove any of its apparatus) the undertakers shall, subject to sub-paragraph (3), afford to the statutory undertakers to their reasonable satisfaction (taking into account paragraph 6(1)) the necessary facilities and rights for—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertakers, or the undertakers is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the statutory undertakers in question shall, on receipt of a written notice to that effect from the undertakers, as soon as reasonably possible take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed except that this obligation shall not extend to the requirement for the statutory undertakers to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertakers under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the statutory undertakers in question and the undertakers.

(5) The statutory undertakers in question shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the statutory undertakers 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 undertakers to be removed under the provisions of this part of this Schedule.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertakers affords to a statutory undertakers facilities and rights for the construction and maintenance in land of the undertakers of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertakers and the statutory undertakers in question and shall be no less favourable on the whole to the statutory undertakers in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by the statutory undertakers.

(2) If the facilities and rights to be afforded by the undertakers and agreed with the statutory undertakers under paragraph 7(1) 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 statutory undertakers 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 shall make such provision for the payment of compensation by the undertakers to that statutory undertakers as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection: gas undertakers

7.—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertakers under paragraph 5(2) or otherwise, the undertakers shall submit to the statutory undertakers in question a plan.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the statutory undertakers under sub-paragraph (1) shall be detailed including a material statement and describing—

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

(3) The undertakers shall not commence the construction or renewal of any works to which sub-paragraph (1) or (2) applies until the statutory undertakers has given written approval of the plan so submitted.

(4) Any approval of the statutory undertakers required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) shall not be unreasonably withheld or delayed.

(5) In relation to a work to which sub-paragraph (1) or (2) applies, the statutory undertakers may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing

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proper and convenient means of access to any apparatus provided that such modifications are made within a period of 56 days beginning with the date on which the plan under sub-paragraph (1) is submitted to it. For the avoidance of doubt, provided that any further iterations of the plan submitted to the statutory undertakers for approval as a result of modifications required under this paragraph are not materially different to the modifications previously made by the statutory undertakers, any further required modifications will be made by the statutory undertakers as soon as reasonably practicable thereafter and in any event within 21 days of receipt of any further plans.

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (2), as amended from time to time by agreement between the undertakers and the statutory undertakers and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the statutory undertakers for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertakers shall be entitled to watch and inspect the execution of those works.

(7) Where statutory undertakers require any protective works to be carried out either themselves or by the undertakers (whether of a temporary or permanent nature) such protective works shall be carried out to the statutory undertakers' satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part thereof) and the statutory undertakers shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If a statutory undertakers in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertakers, reasonably requires the removal of any apparatus and gives written notice to the undertakers of that requirement, paragraphs 1 to 3 and 6 to 8 shall apply as if the removal of the apparatus had been required by the undertakers under paragraph 5(2).

(9) Nothing in this paragraph shall preclude the undertakers from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

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

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

(11) At all times when carrying out any works authorised under the Order comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW27" and HSE's "HS(~G)47 Avoiding Danger from underground services".

Retained apparatus: protection: electricity undertakers

8.—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertakers under paragraph 5(2) or otherwise, the undertakers shall submit to the statutory undertakers in question a plan.

(2) In relation to works which will or may be situated on, over, under or within 8.1 metres measured in any direction of any apparatus, or involve embankment works within 8.1 metres of any apparatus, the plan to be submitted to the statutory undertakers under sub-paragraph (1) shall be detailed including a material statement and describing—

- (a) the exact position of the works;

- (b) the level at which these are proposed to be constructed or renewed;
 - (c) the manner of their construction or renewal including details of excavation, positioning of plant;
 - (d) the position of all apparatus; and
 - (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.
- (3) The undertakers shall not commence the construction or renewal of any works to which sub-paragraph (1) or (2) applies until the statutory undertakers has given written approval of the plan so submitted.
- (4) Any approval of the statutory undertakers required under sub-paragraph (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
 - (b) shall not be unreasonably withheld.
- (5) In relation to a work to which sub-paragraph (1) or (2) applies, the statutory undertakers may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus provided that such modifications are made within a period of 56 days beginning with the date on which the plan under sub-paragraph (1) is submitted to it. For the avoidance of doubt, provided that any further iterations of the plan submitted to the statutory undertakers for approval as a result of modifications required under this paragraph are not materially different to the modifications previously made by the statutory undertakers, any further required modifications will be made by the statutory undertakers as soon as reasonably practicable thereafter and in any event within 21 days of receipt of any further plans.
- (6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (2), as amended from time to time by agreement between the undertakers and the statutory undertakers and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the statutory undertakers for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertakers shall be entitled to watch and inspect the execution of those works.
- (7) Where statutory undertakers require any protective works to be carried out either themselves or by the undertakers (whether of a temporary or permanent nature) such protective works shall be carried out to the statutory undertakers' satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part thereof) and the statutory undertakers shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).
- (8) If a statutory undertakers in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertakers, reasonably requires the removal of any apparatus and gives written notice to the undertakers of that requirement, paragraphs 1 to 3 and 6 to 8 shall apply as if the removal of the apparatus had been required by the undertakers under paragraph 5(2).
- (9) Nothing in this paragraph shall preclude the undertakers from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.
- (10) The undertakers shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it shall give to the statutory undertakers in question notice as soon as is reasonably practicable and a plan of those works and shall—

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

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

Expenses

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

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that the statutory undertakers elects to use powers of compulsory acquisition to acquire any necessary rights under 5(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

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

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertakers or in default of agreement settled by arbitration in accordance with article 34 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertakers in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertakers.

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

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertakers in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertakers 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.

Compensation

10.—(1) Subject to sub-paragraphs (2), (3) and (4), if by reason or in consequence of the construction of any such works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertakers or in consequence of any act or default of the undertakers (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertakers under this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a statutory undertakers, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertakers, or the statutory undertakers becomes liable to pay any amount to any third party, the undertakers shall—

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

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

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

(4) A statutory undertakers shall give the undertakers reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertakers and considering their representations (such representations not to be unreasonably withheld or delayed).

Ground subsidence monitoring scheme in respect of statutory undertakers's apparatus

11.—(1) No works within 15 metres of any apparatus or alternative apparatus shall commence until a scheme for monitoring ground subsidence (“referred to in this paragraph as the monitoring scheme”) which is capable of interfering with or risking damage to statutory undertakers's apparatus has been submitted to and approved by the relevant statutory undertakers, such approval not to be unreasonably withheld or delayed.

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- (2) The ground subsidence monitoring scheme described in sub-paragraph (1) shall set out—
- (a) the apparatus which is to be subject to such monitoring;
 - (b) the extent of land to be monitored;
 - (c) the manner in which ground levels are to be monitored;
 - (d) the timescales of any monitoring activities; and
 - (e) the extent of ground subsidence which, if exceeded, shall require the undertakers to submit for statutory undertakers's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

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

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

Enactments and agreements

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

Co-operation

13. Where in consequence of the proposed construction of any of the authorised development, the undertakers or a statutory undertakers requires the removal of apparatus under paragraph 5(2) or a statutory undertakers makes requirements for the protection or alteration of apparatus under paragraph 7 or 8 the undertakers shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the statutory undertakers's undertaking and each statutory undertakers shall use its best endeavours to co-operate with the undertakers for that purpose.

Access

14. If in consequence of the agreement reached in accordance with paragraph 4 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertakers shall provide such alternative means of access to such apparatus as will enable the statutory undertakers to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. Save for differences or disputes arising under paragraphs 5(2) and (4), 6(1), 7 and 8 any difference or dispute arising between the undertakers and a statutory undertakers under this Schedule

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shall, unless otherwise agreed in writing between the undertakers and that statutory undertakers, be determined by arbitration in accordance with article 34 (arbitration).