

SCHEDULE 8

Article 52

PART 1

For the protection of Associated British Ports

Interpretation

1. In this Part—

“accumulation” means any accumulation of silt or other material (including any materials used to construct the authorised development) which constitutes an impediment to navigation at or in the approaches to the harbours;

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works);

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, or the carrying out of an operation, and “construct” and “constructed” are to be construed accordingly;

“erosion” means any erosion of the bed or banks of the sea or of any jetty or other structure of whatever nature within the harbours or the approaches to the harbours;

“the harbours” means the ports of Swansea and Port Talbot;

“plans” includes sections, descriptions, drawings, specifications, proposed method statements and hydraulic information;

“port land” means any land held by AB Ports for the purpose of its statutory undertaking;

“specified work” means any tidal work and any work or operation authorised by this Order on port land or which may affect port land or navigation in respect of the harbours or the functions of AB Ports in relation to the operation of the harbours; and

“tidal work” includes dredging authorised by this Order or any marine licence granted under Part 4 of the 2009 Act relating to the authorised development.

General

2. For the protection of AB Ports in relation to the harbours the following provisions have effect unless otherwise agreed in writing between the undertaker and AB Ports.

Acquisition or use of port land

3.—(1) The undertaker must not under the powers conferred by this Order acquire or use, or acquire new rights over, port land without the consent of AB Ports.

(2) The undertaker must not exercise powers conferred by article 15 (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 port land without the consent of AB Ports.

(3) Article 25 (power to override easements and other rights) does not apply to any rights held by AB Ports for the purpose of its statutory undertaking, except with the consent of AB Ports.

(4) The consent of AB Ports under this paragraph must not be unreasonably withheld but may be given subject to reasonable conditions.

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Approval of plans and arrangements

4.—(1) Before commencing the construction of any specified work, the undertaker must furnish to AB Ports plans of that work for its approval.

(2) Before decommissioning the generating station comprised in the authorised development the undertaker must furnish to AB Ports for its approval proposed arrangements for the removal or retention of the authorised development and for making it safe and managing it after it has ceased to be used for the generation of electricity.

(3) Any approval of AB Ports under this paragraph—

- (a) must not be unreasonably withheld;
- (b) may be given subject to such reasonable requirements as AB Ports may make for the protection of the harbours and navigation within the harbours and the approaches to the harbours, including a requirement for the undertaker to carry out protective works at its own expense;
- (c) may not vary the operation of this Order.

(4) The undertaker must—

- (a) carry out any specified work and any protective works required under sub-paragraph (3) in accordance with the plans approved under sub-paragraph (1) or settled under article 50 (arbitration); and
- (b) comply with any arrangements approved under sub-paragraph (2) or settled under article 50 (arbitration).

(5) If AB Ports fails to express its disapproval of any plans or arrangements within 56 days after they have been delivered to it under sub-paragraph (1) or (2), it is deemed to have approved them.

(6) Nothing in this paragraph affects the operation of article 42 (application of Energy Act 2004 in relation to decommissioning) or a decommissioning programme approved under that article.

Notice of works

5. The undertaker must give to AB Ports not less than 56 days' written notice of its intention to commence the construction of a specified work and, not more than 14 days after completion of such construction, must give to AB Ports written notice of such completion.

Inspection

6. The undertaker must at all reasonable times during construction of a specified work and thereafter allow AB Ports, its servants and agents, access to such work and all reasonable facilities for inspection of any such work subject always to the reasonable stipulations of the undertaker relating to health, safety, security and confidentiality.

Temporary works

7.—(1) After the purpose of any temporary works has been accomplished the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from AB Ports requiring the undertaker so to do, remove any such temporary works or any materials relating to them which may have been placed on port land or below the level of high water within the harbours or the approaches to the harbours by or on behalf of the undertaker.

(2) If the undertaker fails to do so within a reasonable period after receiving such notice, AB Ports may remove the same and may recover the reasonable costs of doing so from the undertaker.

Erosion or accumulation

8.—(1) If during the construction of a tidal work or after the completion of that work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion the undertaker, if so requested by AB Ports acting reasonably, shall remedy such accumulation or erosion to the extent attributable to such construction and, if it refuses or fails to do so, AB Ports may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) For the purposes of sub-paragraph (1)—

(a) in the case of an accumulation, the remedy shall be its removal; and

(b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as AB Ports reasonably requires.

(3) In the event that surveys, inspection, tests and sampling carried out pursuant to paragraph 12(1)(b) establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a tidal work, the undertaker shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction.

(4) Nothing in this paragraph removes the need for a marine licence under Part 4 of the 2009 Act.

Lighting, etc.

9. The undertaker shall pay to AB Ports the reasonable costs of such alterations to the marking and lighting of the harbours and the approaches to the harbours as may be necessary in consequence of the construction of a tidal work.

Abandoned or decayed works

10.—(1) If any tidal work or any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order is abandoned or falls into decay, insofar as it affects or otherwise impacts upon the operation of the harbours or navigation in the approaches to the harbours, AB Ports may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as AB Ports reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation, AB Ports may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

(a) to repair and restore the work or part of it; or

(b) if the undertaker so elects, to remove the tidal work and (to such extent as AB Ports reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, AB Ports may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

(4) This provision shall not apply where any work is being managed and operated in accordance with any approval given by AB Ports.

(5) In the event of a difference or dispute between the undertaker and AB Ports as to the necessity of any steps or works specified in a notice by AB Ports under this paragraph, such difference or dispute shall be determined by arbitration in accordance with article 50 (arbitration).

(6) Nothing in this paragraph affects the operation of article 42 (application of Energy Act 2004 in relation to decommissioning), or a decommissioning programme approved under that article.

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Byelaws

11. The undertaker must consult AB Ports not less than 42 days before making any byelaw under article 47 (byelaws) and shall not make any byelaw which in the reasonable opinion of AB Ports conflicts with any byelaws made by AB Ports or with any powers exercisable by AB Ports or a harbour master of AB Ports for the regulation of navigation at the harbours or the approaches to the harbours.

Indemnity

12.—(1) Without limiting the other provisions of this Part, the undertaker is to be responsible for, and make good to AB Ports, all losses, costs, charges, damages and expenses however caused which may reasonably be incurred by or occasioned to AB Ports by reason of or arising from or in connection with—

- (a) the perusal of plans and navigation schemes and the inspection of a specified work by AB Ports or its duly authorised representative;
- (b) the carrying out of surveys, inspections, tests and sampling within the harbours and the approaches to the harbours—
 - (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of the River Tawe as AB Ports has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the undertaker is liable to remedy under paragraph 8; and
 - (ii) where AB Ports has reasonable cause to believe that the construction of any of the tidal works is causing or has caused any such accumulation or erosion;
- (c) the construction or failure of a specified work, or the undertaking by AB Ports of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of AB Ports arising from such construction or failure including—
 - (i) any additional costs of dredging incurred by AB Ports as a result of contamination of the seabed caused by the construction of the specified work; and
 - (ii) any damage to the lock gates or damage from flooding caused by increased wave reflection as a result of the construction of the specified work;
- (d) any act or omission of the undertaker or their servants or agents whilst engaged in the construction of a specified work.

(2) Without limiting the generality of sub-paragraph (1), the undertaker must indemnify AB Ports from and against all claims and demands arising out of, or in connection with, such construction, or failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) or (2) are attributable to negligence on the part of AB Ports or of any person in its employ or of its contractors or agents.

(4) AB Ports must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.

13. The fact that any work or thing has been executed or done with the consent of AB Ports and in accordance with any conditions or restrictions prescribed by AB Ports or in accordance with any plans approved or deemed to be approved by AB Ports or to its satisfaction or in accordance with any directions or award of any arbitrator or in accordance with any plans approved by the Welsh Ministers and any conditions or restrictions imposed by them, does not relieve the undertaker from any liability under the provisions of this Part.

14. With the exception of any duty owed by AB Ports to the undertaker expressly provided for in the foregoing provisions of this Part, nothing in this Order is to be construed as imposing upon AB Ports, either directly or indirectly, any form of duty or liability to which AB Ports would not otherwise be subject which is enforceable by proceedings before any court.

Statutory functions

15. Save to the extent expressly provided for nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, AB Ports at the commencement of this Order.

Arbitration

16. Any difference or dispute arising under this Part shall, unless otherwise agreed in writing between the undertaker and AB Ports, be determined by arbitration in accordance with article 50 (arbitration).

PART 2

For the protection of Neath Port Authority

Interpretation

17. In this Part—

“accumulation” means any accumulation of silt or other material (including any materials used to construct the authorised development) which constitutes an impediment to navigation at or in the approaches to the harbour including but not limited to accumulations against Work No. 1b;

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works);

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, or the carrying out of an operation and “construct” and “constructed” are to be construed accordingly;

“erosion” means any erosion of the bed or banks of the sea or of any jetty or other structure of whatever nature within the harbour or the approaches to the harbour;

“the harbour” means the Port of Neath;

“plans” includes sections, descriptions, drawings, specifications, proposed method statements, hydraulic and bathymetric survey information and risk assessment;

“specified work” means any tidal work and any work or operation authorised by the Order which is likely to affect navigation in respect of the harbour or the functions of Neath Port Authority in relation to the operation of the harbour; and

“tidal work” includes dredging authorised by this Order or any licence granted under Part 4 of the 2009 Act relating to the authorised development.

General

18. For the protection of Neath Port Authority in relation to the harbour the following provisions have effect unless otherwise agreed in writing between the undertaker and Neath Port Authority.

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Approval of plans and arrangements

19.—(1) Before commencing the construction of any specified work the undertaker must furnish to Neath Port Authority plans of that work for its approval.

(2) Any approval of Neath Port Authority under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) may be given subject to such reasonable requirements as Neath Port Authority may make for the protection of the harbour and navigation within the harbour and the approaches to the harbour, including a requirement for the undertaker to carry out protective works at its own expense;
- (c) may not vary the operation of this Order.

(3) The undertaker must carry out any specified work and any protective works required under sub-paragraph (2) in accordance with the plans approved under sub-paragraph (1) or settled under article 50 (arbitration).

(4) If Neath Port Authority fails to express its disapproval of any plans or arrangements within 56 days after they have been delivered to it under sub-paragraph (1), it will be deemed to have approved them.

Notice of works

20. The undertaker must give to Neath Port Authority not less than 56 days' written notice of its intention to commence the construction of the specified work and, not more than 14 days after completion of such construction, must give to Neath Port Authority written notice of such completion.

Inspection

21. The undertaker must at all reasonable times during construction of a specified work and thereafter allow Neath Port Authority, its servants and agents, access to such work and all reasonable facilities for inspection of any such work subject always to the reasonable stipulations of the undertaker relating to health, safety, security and confidentiality.

Temporary works

22.—(1) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Neath Port Authority requiring the undertaker so to do, remove any such temporary works or any materials relating to them which may have been placed below the level of high water within the harbour or the approaches to the harbour by or on behalf of the undertaker.

(2) If the undertaker fails to do so within a reasonable period after receiving such notice, Neath Port Authority may remove the same and may recover the reasonable costs of doing so from the undertaker.

Erosion or accumulation

23.—(1) If during the construction of a tidal work or after the completion of that work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion within the harbour or approaches to the harbour that is likely to be detrimental to navigation, the undertaker, if so requested by Neath Port Authority acting reasonably, shall remedy such accumulation or erosion to the extent attributable to such construction and, if it refuses or fails to do so, Neath Port Authority may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

- (2) For the purposes of sub-paragraph (1)—
 - (a) in the case of an accumulation, the remedy shall be its removal; and
 - (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as Neath Port Authority reasonably requires.
- (3) In the event that surveys, inspection, tests and sampling carried out pursuant to paragraph 26(1)(b) establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a tidal work, the undertaker shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction.
- (4) Nothing in this paragraph removes the need for a marine licence under Part 4 of the 2009 Act.

Lighting, etc.

24. The undertaker shall pay to Neath Port Authority the reasonable costs of such alterations to the marking and lighting of the harbour and the approaches to the harbour as may be necessary in consequence of the construction of a tidal work.

Abandoned or decayed works

25.—(1) If any tidal work or any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order is abandoned or falls into decay, insofar as it affects or otherwise impacts upon the operation of the harbour or navigation in the approaches to the harbours, Neath Port Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as Neath Port Authority reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation, Neath Port Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the undertaker so elects, to remove the tidal work and (to such extent as Neath Port Authority reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, Neath Port Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

(4) This provision shall not apply where any work is being managed and operated in accordance with any approval given by Neath Port Authority or by any programme approved by the Secretary of State to which article 42 (Application of Energy Act 2004 in relation to decommissioning) applies.

(5) In the event of a difference or dispute between the undertaker and Neath Port Authority as to the necessity of any steps or works specified in a notice by Neath Port Authority under this paragraph such difference or dispute shall be determined by arbitration in accordance with article 50 (arbitration).

(6) Nothing in this paragraph affects the operation of article 42 (Application of Energy Act 2004 in relation to decommissioning) or a decommissioning programme approved under that article.

Indemnity

26.—(1) Without limiting to the other provisions of this Part, the undertaker is to be responsible for, and make good to Neath Port Authority, all losses, costs, charges, damages and expenses however

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caused which may reasonably be incurred by or occasioned to Neath Port Authority by reason of or arising from or in connection with—

- (a) the perusal of plans and navigation schemes and the inspection of the specified work by Neath Port Authority or its duly authorised representative;
- (b) the carrying out of surveys, inspections, tests and sampling within the harbour and the approaches to the harbours—
 - (i) to establish the marine conditions prevailing prior to the construction of any tidal work in such area as Neath Port Authority has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the undertaker is liable to remedy under paragraph 23; and
 - (ii) where Neath Port Authority has reasonable cause to believe that the construction of any of the tidal works is causing or has caused any such accumulation or erosion;
- (c) the construction or failure of a specified work, or the undertaking by Neath Port Authority of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of Neath Port Authority arising from such construction or failure;
- (d) any act or omission of the undertaker or their servants or agents whilst engaged in the construction of a specified work.

(2) Without limiting the generality of sub-paragraph (1), the undertaker shall indemnify Neath Port Authority from and against all claims and demands arising out of, or in connection with, such construction, or failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) or (2) are attributable to negligence on the part of Neath Port Authority or of any person in its employ or its contractors or agents.

(4) Neath Port Authority must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph, and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.

27. The fact that any work or thing has been executed or done with the consent of Neath Port Authority and in accordance with any conditions or restrictions prescribed by Neath Port Authority or in accordance with any plans approved or deemed to be approved by Neath Port Authority or to its satisfaction or in accordance with any directions or award of any arbitrator or and any conditions or restrictions imposed by the arbitrator, does not relieve the undertaker from any liability under the provisions of this Part.

28. With the exception of any duty owed by Neath Port Authority to the undertaker expressly provided for in the foregoing provisions of this Part, nothing in this Order is to be construed as imposing upon Neath Port Authority, either directly or indirectly, any form of duty or liability to which Neath Port Authority would not otherwise be subject which is enforceable by proceedings before any court.

Statutory functions

29. Save to the extent expressly provided for nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, Neath Port Authority at the commencement of this Order.

Arbitration

30. Any difference or dispute arising under this Part shall, unless otherwise agreed in writing between the undertaker and Neath Port Authority, be determined by arbitration in accordance with article 50 (arbitration).

PART 3

For the protection of National Grid Electricity Transmission Plc

Application

31. For the protection of the protected person, the following provisions shall, unless otherwise agreed in writing between the protected person and the persons concerned, have effect.

Interpretation

32. In this Part—

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

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989 belonging to or maintained by that protected person;

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works), and for the purposes of this Part includes the use and maintenance of the authorised development;

“commence” has the same meaning as in article 2 but for the purposes of this Schedule any works whatsoever which are near to or may affect apparatus of the protected person shall be included within that definition and for the avoidance of doubt this includes works for the diversion or laying of services and commencement shall be construed accordingly;

“functions” includes powers and duties;

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

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

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

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

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

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“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

“protected person” means National Grid Electricity Transmission plc.

33. Except for paragraphs **34** (apparatus of protected persons in stopped up streets), **39** (retained apparatus: protection), **40** (expenses) and **41** (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of protected persons in stopped up streets

34.—(1) Where any street is stopped up under article **10** (temporary stopping up of streets), the protected person whose apparatus is in the street or accessed via that street shall be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to the protected person legal easements reasonably satisfactory to the protected person in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any street under the powers in article **10** (temporary stopping up of streets), the protected person is at liberty at all times to take all necessary access across any such stopped up 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 was in that highway.

Protective works to buildings

35.—(1) The undertaker, in the case of the powers conferred by article **14** (protective work to buildings), shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected person and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the protected person or any interruption in the supply of electricity by the protected person is caused, the undertaker shall bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

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

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of the protected person or its contractors or workers; and the protected person shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without first consulting the undertaker and giving it an opportunity to make representations as to the claim or demand.

Acquisition of land

36. This Order does not authorise the acquisition or extinguishment of land or rights in land or override any interest in land owned by the protected person that is or are required for the retention or maintenance of any retained apparatus except with the agreement of the protected person which shall not be unreasonably withheld.

Removal of apparatus

37.—(1) If, in the exercise of the agreement reached in accordance with paragraph 36 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part and any right of the protected person 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 protected person in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the protected person 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the protected person reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the protected person to their satisfaction (taking into account paragraph 38(1)) the necessary facilities and rights for—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the protected person shall, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for the protected person 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 undertaker under this Part shall be constructed in such manner and in such line or situation as may be agreed between the protected person and the undertaker.

(5) The protected person shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected person 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) 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 easements rights agreements or licences granted, used, enjoyed or exercised by the protected person as of right or otherwise in relation to the apparatus then the provisions of this Part prevail.

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected person under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the

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protected person 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 shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

39.—(1) Not less than 56 days before the commencement 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 undertaker under paragraph 37(2) or otherwise, the undertaker shall submit to the protected person a plan and a ground monitoring scheme and seek from the protected person details of the underground extent of any electricity tower foundations.

(2) In relation to works which will or may be (i) situated on, over, under or within 15m measured in any direction of, any apparatus; or (ii) involve embankment works within 10m of any apparatus; or (iii) involve works within 10m of the outermost edge of any tower foundations, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal 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) intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues;
- (h) details of clearance to pylon foundations;
- (i) demonstration that pylon foundations will not be affected prior to, during and after construction; and
- (j) a written management plan for high voltage hazard during construction.

(3) The undertaker shall not commence any works to which sub-paragraph (2) applies until the protected person has given written approval of the plan so submitted.

(4) Any approval of the protected person required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6);
- (b) shall not be unreasonably withheld.

(5) In relation to a work to which sub-paragraph (2) applies, the protected person 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.

(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 (5), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with this sub-paragraph by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

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(7) Where the protected person requires any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected persons' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) and the protected persons shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (5) (except in an emergency).

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

(9) 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 shall give to the protected person notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(10) 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".

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that the protected person retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 40.

Expenses

40.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to the protected person on demand all charges, costs and expenses reasonably anticipated or incurred by that protected person 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 undertaker elects to use compulsory purchase powers to acquire any necessary rights under paragraph 37(3) all costs incurred as a result of such action;
- (b) the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part.

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(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 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 50 (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 protected person 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 undertaker.

(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 the protected person 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 protected person 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

41.—(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 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 purposes of those works) or property of the protected person, or there is any interruption in any service provided, or in the supply of any goods, by the protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

(a) bear and pay on demand the cost reasonably incurred by the protected person in making good such damage or restoring the supply; and

(b) indemnify the protected person for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the protected person, by reason or in consequence of any such damage or interruption or the protected person becoming liable to any third party as aforesaid.

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

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

(4) The protected person shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering its representations.

Enactments and agreements

42. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and the protected person 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

43. Where in consequence of the proposed construction of any of the authorised development, the undertaker or the protected person requires the removal of apparatus under paragraph 37(2) or the protected person makes requirements for the protection or alteration of apparatus under paragraph 39, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the protected person's undertaking and the protected person shall use its best endeavours to co-operate with the undertaker for that purpose.

Access

44. If in consequence of the agreement reached in accordance with paragraph 36 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

45. Save for differences or disputes arising under paragraphs 37(2), 37(4), 38(1) and 39 any difference or dispute arising between the undertaker and the protected person under this Part shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 50 (arbitration).

PART 4

For the protection of Western Power Distribution (South Wales) Plc

Application

46. For the protection of the persons referred to in this Part, the following provisions shall, unless otherwise agreed in writing between the protected person and the undertaker, have effect.

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Interpretation

47. In this Part—

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

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989 belonging to or maintained by that protected person;

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works), and for the purposes of this Part includes the use and maintenance of the authorised development;

“commence” has the same meaning as in article 2 but for the purposes of this Schedule any works whatsoever which are near to or may affect apparatus of the protected person shall be included within that definition and for the avoidance of doubt this includes works for the diversion or laying of services and commencement shall be construed accordingly;

“functions” includes powers and duties;

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

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

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

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

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

“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

“protected person” means Western Power Distribution (South Wales) Plc.

48. Except for paragraphs 49 (apparatus of protected persons in stopped up streets), 54 (retained apparatus: protection), 55 (expenses) and 56 (indemnity) this Part does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of protected persons in stopped up streets

49.—(1) Where any street is stopped up under article 10 (temporary stopping up of streets), the protected person whose apparatus is in the street or accessed via that street shall be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to the protected person legal easements reasonably satisfactory to the protected person in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any street under the powers in article 10 (temporary stopping up of streets), the protected person is at liberty at all times to take all necessary access across any such stopped up 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 was in that highway.

Protective works to buildings

50.—(1) The undertaker, in the case of the powers conferred by article 14 (protective work to buildings), shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected person and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the protected person or any interruption in the supply of electricity by the protected person is caused, the undertaker shall bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

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

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of the protected person or its contractors or workers; and the protected person shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without first consulting the undertaker and giving it an opportunity to make representations as to the claim or demand.

Acquisition of land

51. This Order does not authorise the acquisition or extinguishment of land or rights in land or override any interest in land owned by the protected person that is or are required for the retention or maintenance of any retained apparatus except with the agreement of the protected person which shall not be unreasonably withheld.

Removal of apparatus

52.—(1) If, in the exercise of the agreement reached in accordance with paragraph 51 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part and any right of the protected person 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 protected person in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the protected person 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the protected person reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the protected person to their satisfaction (taking into account paragraph 53(1)) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and

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(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the protected person shall, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for the protected person 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 undertaker under this Part shall be constructed in such manner and in such line or situation as may be agreed between the protected person and the undertaker.

(5) The protected person shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected person 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) 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 easements rights agreements or licences granted, used, enjoyed or exercised by the protected person as of right or otherwise in relation to the apparatus then the provisions of this Part prevail.

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected person under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the protected person 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 shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

54.—(1) Not less than 56 days before the commencement 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 undertaker under paragraph 52(2) or otherwise, the undertaker shall submit to the protected person a plan and a ground monitoring scheme and seek from the protected person details of the underground extent of any electricity tower foundations.

(2) In relation to works which will or may be (i) situated on, over, under or within 15m measured in any direction of, any apparatus; or (ii) involve embankment works within 10m of any apparatus; or (iii) involve works within 10m of the outermost edge of any tower foundations, the plan to be

submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal 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) intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues;

(3) The undertaker shall not commence any works to which sub-paragraph (2) applies until the protected person has given written approval of the plan so submitted.

(4) Any approval of the protected person required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6);
- (b) shall not be unreasonably withheld.

(5) In relation to a work to which sub-paragraph (2) applies, the protected person 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.

(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 (5), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with this sub-paragraph by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

(7) Where the protected person requires any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected persons' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) and the protected persons shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (5) (except in an emergency).

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

(9) 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 shall give to the protected person notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(10) 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".

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Expenses

55.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to the protected person on demand all charges, costs and expenses reasonably anticipated or incurred by that protected person 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 undertaker elects to use compulsory purchase powers to acquire any necessary rights under paragraph 52(3) all costs incurred as a result of such action;
- (b) the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part.

(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 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 50 (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 protected person 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 undertaker.

(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 the protected person 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 protected person 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

56.—(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 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 purposes of those works) or property of the protected person, or there is any interruption in any service provided, or in the supply of any goods, by the protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

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

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

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

(4) The protected person shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering its representations.

Enactments and agreements

57. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and the protected person 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

58. Where in consequence of the proposed construction of any of the authorised development, the undertaker or the protected person requires the removal of apparatus under paragraph 52(2) or the protected person makes requirements for the protection or alteration of apparatus under paragraph 54, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the protected person's undertaking and the protected person shall use its best endeavours to co-operate with the undertaker for that purpose.

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Access

59. If in consequence of the agreement reached in accordance with paragraph 51 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

60. Save for differences or disputes arising under paragraphs 52(2), 52(4), 53(1) and 54 any difference or dispute arising between the undertaker and the protected person under this Part shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 50 (arbitration).

PART 5

For the protection of SSE Energy Supply Limited,
SWALEC and, Wales and West Utilities Limited

Application

61. For the protection of the protected persons referred to in this Part the following provisions shall, unless otherwise agreed in writing between the undertaker and the protected person concerned, have effect.

Interpretation

62. In this Part—

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

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

“apparatus” means in the case of a gas protected person, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works), and for the purposes of this Part includes the use and maintenance of the authorised development;

“commence” has the same meaning as in article 2 but for the purposes of this Schedule any works whatsoever which are near to or may affect apparatus of the protected person shall be included within that definition and for the avoidance of doubt this includes works for the diversion or laying of services and commencement shall be construed accordingly;

“functions” includes powers and duties;

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

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

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

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

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

“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

“protected person” means any of SSE Energy Supply Limited, SWALEC and, Wales and West Utilities Limited; and

“undertaker” means the undertaker as defined in article 6 of this Order.

63. Except for paragraphs 64 (apparatus in stopped up streets), 68 (retained apparatus: protection), 69 (expenses) and 70 (indemnity) this Part does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of protected person in stopped up streets

64. Notwithstanding the temporary stopping up or diversion of any street under the powers in article 10 (temporary stopping up of streets), the protected person is at liberty at all times to take all necessary access across any such stopped up 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 was in that street.

Protective works to buildings

65.—(1) The undertaker, in the case of the powers conferred by article 14 (protective work to buildings), shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected person and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the protected person or any interruption in the supply of electricity, gas or water, as the case may be, by the protected person is caused, the undertaker shall bear and pay on demand the costs reasonably incurred by that protected person in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

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

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of the protected person or its contractors or workers; and the protected person shall give to the undertaker reasonable notice of any claim or demand under sub-paragraph (1) and no settlement or compromise shall be made without first consulting the undertaker and giving it an opportunity to make representations as to the claim or demand.

Removal of apparatus

66.—(1) If, in the exercise of an agreement reached in accordance with sub-paragraph (3) or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus a protected person is placed, that apparatus shall not be removed under this Part and any right of the protected person 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 undertaker in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the protected person 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the protected person reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the undertaker to their satisfaction (taking into account paragraph 67(1)) the necessary facilities and rights for—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the protected person shall, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for the protected person 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 undertaker under this Part shall be constructed in such manner and in such line or situation as may be agreed between the protected person and the undertaker.

(5) The protected person shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected person 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

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected person under (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the protected person 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 shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

68.—(1) Not less than 56 days before the commencement of any authorised 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 undertaker under paragraph 66(2) or otherwise, the undertaker shall submit to the protected person a plan.

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

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (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) intended maintenance regimes.

(3) The undertaker shall not commence any works to which sub-paragraph (2) applies until the protected person has given written approval of the plan so submitted.

(4) Any approval of the protected person required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6);
- (b) shall not be unreasonably withheld.

(5) In relation to a work to which sub-paragraph (2) applies, the protected person 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.

(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 (5), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with this sub-paragraph by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

(7) Where the protected person requires any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected persons' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) and the protected persons shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (5) (except in an emergency).

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

(9) 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 shall give to the protected person notice as soon as is reasonably practicable and a plan of those works and shall—

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- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(10) At all times when carrying out any works authorised under the Order comply with Wales & West Utilities policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of pipelines and associated installations operating above 2 BARs” and “General conditions to be observed for the protection of apparatus and the prevention of disruption to gas supplies” “HS(~G)47 Avoiding Danger from underground services”.

Expenses

69.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to the protected person on demand all charges, costs and expenses reasonably anticipated or incurred by that protected person 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 Part 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 undertaker elects to use compulsory purchase powers to acquire any necessary rights under 66(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part.

(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 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 50 (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 protected person 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 undertaker.

- (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 the protected person 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 protected person 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

70.—(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 or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this 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 the protected person, or there is any interruption in any service provided, or in the supply of any goods, by the protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

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

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

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

(4) The protected person shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering their representations.

(5) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land either owned by the protected person in respect of which the protected person has an easement or wayleave for their Apparatus or any other Interest or to carry out any works within 15m of the protected person's apparatus until the following conditions are satisfied—

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- (a) unless and until the protected person is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and the protected person has confirmed the same to the undertaker in writing; and
- (b) unless and until the protected person are satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and protected person has confirmed the same in writing to the undertaker.

(6) In the event of the undertakers failure to comply with sub-paragraph (5) the protected person shall be entitled to seek injunctive relief (or any other equitable remedy) in any court of competent jurisdiction and the undertaker irrevocably and unconditionally waives any right of objection in relation to the protected person's right to seek injunctive relief or any other equitable remedy.

Enactments and agreements

71. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and the protected person 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

72. Where in consequence of the proposed construction of any of the authorised development, the undertaker or the protected person requires the removal of apparatus under paragraph 66(2) or the protected person makes requirements for the protection or alteration of apparatus under paragraph 67, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the protected person's undertaking and the protected person shall use its best endeavours to co-operate with the undertaker for that purpose.

Access

73. If in consequence of the agreement reached in accordance with paragraph 66 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

74. Save for differences or disputes arising under paragraphs 66(2) and (4) , 67(1) and 68 any difference or dispute arising between the undertaker and the protected person under this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 50 (arbitration).

PART 6

For the protection of British Telecommunications Plc,
Telefónica O2 UK Limited, and Virgin Media Limited

Application

75. For the protection of communication operators, the following provisions of this Part shall, unless it is otherwise agreed in writing between the undertaker and the communication operator, have effect.

Interpretation

76. In this Part—

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works);

“communication operators” means any of British Telecommunications plc, Telefónica O2 UK Limited and Virgin Media Limited; and

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003⁽¹⁾.

Apparatus of public communications operator in stopped up streets

77. The temporary stopping up or diversion of any street under article 10 (temporary stopping up of streets) does not affect any right of a public communications provider under paragraph 9 of the Telecommunications Code (the “Code”), contained in Schedule 2 to the Telecommunications Act 1984⁽²⁾, in respect of any apparatus which at the time of the temporary stopping up or diversion is in that street.

Indemnity

78. If any of the communication operators suffers damage by reason or in consequence of the construction, use or failure of the authorised development or any subsidence resulting from those works, the undertaker shall pay any cost reasonably and properly incurred by the communication operator in making good such damage, and shall indemnify the communication operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by the communication operator by reason or in consequence of any such damage, but—

- (a) nothing in this paragraph imposes any liability on the undertaker with respect to any damage to the extent that such damage is attributable to any act or omission of the communication operator, its officers, servants, contractors or other agents; and
- (b) the communication operator shall give to the undertaker reasonable notice of any claim, demand or proceedings and shall make no settlement of any claim, demand or proceedings without the consent of the undertaker, such consent not to be unreasonably withheld.

Code

79. Nothing in this Order affects any right of a public communications provider under the Code.

(1) 2003 c. 21.

(2) 1984 c. 12 as amended by Schedule 3 to the Communications Act 2003.

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PART 7

For the protection of Dŵr Cymru Cyfyngedig

Application

80. For the protection of the protected person, the following provisions, unless otherwise agreed in writing between the undertaker and the protected person, have effect.

Interpretation

81. In this Part—

“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 and which is part of a sustainable drainage system;

“apparatus” means all apparatus or accessories vested in or belonging to the protected person for the purpose of carrying on its statutory undertaking including the outfall;

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works);

“draft specification” means a detailed plan, cross-section and description of the specified works to be prepared by the undertaker (including, without limitation, a method statement and risk assessment setting out the intention in respect of the specified works, construction methods and programmes, and the position of the apparatus that might be affected as a result of the specified works);

“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;

“outfall” means the existing long sea outfall pipeline from Swansea Bay Waste Water Treatment Works;

“outfall works” means Work No. 3 and such other works required for its provision under the powers of this Order;

“protected person” means Dŵr Cymru Cyfyngedig;

“specification” means the approved version of a draft specification considered by the protected person under paragraph 85 of this Part;

“specified works” means the outfall works and any work forming part of the authorised development in any land purchased, held, or used pursuant to the Order that is—

- (a) within 3m either side of the centre line of any public sewer or public water main that is less than 300mm in diameter;
- (b) within 6m either side of a public sewer or public water main where the public sewer or public water main is greater than 300mm in diameter;
- (c) within 9m either side of the centre line of a rising main; or
- (d) within 100m either side of the centre line of the outfall,

or which will or may in any way affect any apparatus together with all ancillary actions relating hereto; and

“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.

Consent not to be unreasonably withheld

82. Where under any provision of this Part the consent or agreement of any person is required, such consent shall not be unreasonably withheld or delayed, may be given subject to reasonable conditions and may be given by the duly authorised representative of that person.

Water Industry Act 1991

83. This Part does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 and Part 4 of the Water Industry Act 1991(3).

Written consent necessary

84. Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any apparatus or accessories or override or extinguish any easement or other interest of the protected person or acquire any land or other interest of the protected person or create any new rights over the same without the prior written consent of the protected person.

Protection of apparatus

85.—(1) Without limiting the other provisions of this Part, before commencing the construction, replacement, renewal or removal of any specified work, and in the case of any specified work of a temporary nature its removal, the undertaker shall submit to the protected person a draft specification.

(2) For the purpose of the preparation of the draft specification and subject to such reasonable stipulations as it may require, the protected person shall as soon as reasonably practicable upon the undertaker's reasonable request permit the undertaker to have reasonable access to such plans as it may have in its possession and to any of its land or apparatus.

(3) The protected person shall examine the draft specification submitted under sub-paragraph (1) and give its written consent or proposed amendments to the draft specification within 28 days from the date of receipt (and in the event of amendments, the process in this sub-paragraph shall be repeated where those amendments are not accepted) provided that where consent is neither given nor refused within 42 days of the submission of the draft specification (or such other time period agreed by the undertaker and the protected person acting reasonably) consent thereto shall be deemed to have been given. The undertaker shall not commence the specified works until written or deemed consent is provided by the protected person in accordance with this sub-paragraph.

(4) The conditions which may be imposed under any consent and relating to a specification given by the protected person hereunder include conditions as to—

- (a) the commencement date and completion date of the specified works;
- (b) the reasonable removal, extension or alteration of apparatus necessitated by the specified works;
- (c) works for the protection of apparatus necessitated as a result of the specified works;
- (d) provision for access to any apparatus;
- (e) such works, provisions or methods as are reasonably necessary for the protection of the environment or the protection of the protected person from liability under the terms of any licence relating to its activities; and

(3) 1991 c. 56.

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- (f) an advance warning system providing for liaison between the undertaker and the protected person in respect of potential performance operational issues affecting, or damage to, apparatus arising from the specified works.
- (5) The specified works shall be executed only—
- (a) in accordance with the specification;
 - (b) exercising the standard of skill and care reasonably to be expected of a skilled and experienced professional person engaged in undertakings of a similar scope, nature and complexity as the specified works; and
 - (c) in accordance with such reasonable conditions and requirements as may be imposed by the protected person,
- and the protected person shall be entitled to watch and inspect the execution of the specified works.
- (6) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time a draft specification to be implemented in substitution of the draft specification previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new draft specification, but the substituted draft specification shall not become the specification and may not be carried out without the consent or deemed consent of the protected person.
- (7) The undertaker may not be required to comply with sub-paragraph (1) in a case of emergency provided it has complied with paragraph 88, save that the undertaker shall comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, after carrying out any specified works to which this sub-paragraph applies.
- (8) The undertaker shall be responsible to the protected person for the reasonable expenses (including VAT) incurred by the protected person in, or in connection with, the inspection of the specified works or the apparatus, the protection of any apparatus or temporary works to be undertaken by the protected person (including in respect of examining the draft specification in accordance with sub-paragraph (3)).
- (9) Where the protected person has apparatus that will be affected by the specified works (including the outfall), the undertaker shall determine the exact location of apparatus prior to any specified works being carried out by the undertaker.
- (10) The undertaker shall not make any trial holes which interfere with any apparatus without the consent of the protected person.
- (11) When works for the provision of any new, extended or altered apparatus or any protective work forming part of any such new, extended or altered apparatus, or existing apparatus, have been completed under this Part to the reasonable satisfaction of the protected person, they shall be vested in the protected person forthwith but shall be maintainable by the undertaker until a period of—
- (a) in the case of the outfall works, 24 months has elapsed and the protected person or an engineer appointed by the protected person has issued a certificate of final inspection of the new, altered or extended apparatus;
 - (b) in the case of any other specified works which vest in the protected person in accordance with this paragraph, 12 months has elapsed and the protected person or an engineer appointed by the protected person has issued a certificate of final inspection of the new, altered or extended apparatus.

Outfall

86. Save as may be authorised under paragraph 85, the undertaker shall not take any action or permit any action to be taken which is likely to endanger the structural integrity of the outfall.

Suspension of specified works

87.—(1) The protected person is entitled to instruct the undertaker to suspend the specified works (or any part of the specified works) if in the protected person's reasonable opinion the actions of the undertaker, or those of its contractors or subcontractors in carrying out the specified works otherwise than in accordance with the specification or the provisions in this Part have caused damage to any apparatus or are likely to cause or result in damage to any apparatus or damage to the environment that was not foreseen at the time of the approval of the specification. In the event of such an instruction being given by the protected person—

- (a) the undertaker shall procure that it and its contractors and subcontractors shall as soon as reasonably practicable and forthwith in case of urgency suspend or cease the specified works in each case having due regard to health and safety factors and shall discuss and agree with the protected person such remedial actions (which may include works) as may be required prior to resuming the specified works and the person who shall be responsible for the performance of such remedial actions;
- (b) the undertaker and the protected person shall act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the specified works;
- (c) the protected person shall at such time as it issues any instruction under this paragraph submit to the undertaker immediately a written notice specifying the reasons for suspending the specified works;
- (d) in the event that the protected person fails to supply the written notice within 5 working days of the protected person's instruction to suspend, the instruction shall be void and the undertaker shall be entitled to recommence the specified works; and
- (e) where the protected person is responsible for any remedial action, it shall commence, carry out and complete such remedial actions pursuant to paragraph (a), as soon as reasonably practicable and the protected person shall give the undertaker notice immediately upon completion of such remedial works and on receipt of such notice the undertaker shall be entitled to resume the specified works.

(2) The protected person shall be entitled to reclaim all reasonable costs of all remedial actions attributable to any act or neglect of the undertaker in accordance with this paragraph.

Repair, maintenance and emergency works

88.—(1) If in the reasonable opinion of the protected person repairs or maintenance works are necessary to apparatus within the Order limits, the undertaker shall as soon as reasonably practicable, and (without prejudice to sub-paragraph (3)) in case of emergency forthwith, but subject always to such reasonable conditions as the undertaker may impose, permit access to the protected person for both personnel and equipment and allow the protected person (or its agent) to carry out such repairs or maintenance works.

(2) The undertaker is permitted to carry out emergency works provided that it first notifies the protected person of this immediately and in the event that the protected person suffers any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification the provision in paragraph 91 shall apply.

(3) The protected person shall at all times be permitted to carry out any emergency works in relation to its apparatus at the development site in accordance with Part 2 of Schedule 6 to the Water Industry Act 1991.

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Entry on protected person's land

89.—(1) Regardless of the other provisions of this Part, the undertaker shall not access any land comprised in site 02055 as shown on the land plans (plan 2 of 18) (“the waste water treatment works”) without providing 14 days’ prior written notice.

(2) The undertaker shall comply with the health and safety requirements specified by the protected person whilst present on the site of the waste water treatment works.

Expenses

90.—(1) Subject to the following provisions of this paragraph, the undertaker is liable to make good, or, if the protected person so decides, to repay to the protected person the reasonable expenses and costs (including without limitation legal and professional fees) reasonably incurred by the protected person in, or in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Part (including any costs or compensation paid in connection with the acquisition of rights or land or the exercise of statutory powers for such apparatus);
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;
- (c) the survey of any land, apparatus or works, the inspection, superintendence and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by the undertaker of any power under this Order;
- (d) the preparation and completion of any deeds of transfer where the apparatus is abandoned rather than removed; and
- (e) any other work or thing rendered reasonably necessary in consequence of the exercise by the undertaker of any power under this Order,

within a reasonable time of being notified by the protected person that it has incurred such expenses.

(2) If in accordance with the provisions of this Part, 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 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 50 (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 protected person by virtue of paragraph 91(1) shall be reduced by the amount of that excess.

(3) For the purposes of paragraph 91(2) 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.

Damage to apparatus

91.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works referred to in this Part 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 the protected person, or there is any interruption in any service provided by the protected person, the undertaker shall to the extent possible in law—

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

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 the protected person, its officers, servants, contractors or agents.

(3) The protected person shall give the undertaker reasonable notice of any claim or demand from any third party arising out of or in connection with the specified works, and no settlement or compromise shall be made without the consent of the undertaker.

Enactments

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

PART 8

For the protection of the City and County of Swansea Council

Accumulation and dredging in River Tawe

93.—(1) If during the construction of a tidal work or after the completion of that work and wholly or partly in consequence of its construction or presence there is caused or created an accumulation in that section of the River Tawe between the entrance to King’s Dock and the Sail Bridge the undertaker, if so requested by the City and County of Swansea Council acting reasonably, shall remedy such accumulation or erosion to the extent attributable to such construction or presence and, if it refuses or fails to do so, or if the City and County of Swansea Council so elects, that council may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) For the purposes of sub-paragraph (1), in the case of any accumulation, the remedy shall be its removal.

(3) In the event that such accumulation would have been caused in any event by the factors other than the construction of a tidal work, the undertaker shall be liable to remedy such accumulation only to the extent that the same is attributable to such construction.

(4) Nothing in this paragraph removes the need for a marine licence under Part 4 of the 2009 Act.

94. Any difference arising between the undertaker and the City and County of Swansea Council other than a difference as to the meaning and construction of this Part shall be referred to and settled by arbitration under article 50 (arbitration) of this Order.

95. In this Part—

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works), and for the purposes of this Schedule includes the use and maintenance of the authorised development;

“tidal work” includes dredging authorised by this Order or any licence granted under Part 4 of the 2009 Act relating to the authorised development.

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