

## SCHEDULE 8

Article 37

### Protective provisions

## PART 1

### For the protection of Anglian Water

#### Application

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

#### Interpretation

2. In this Part of this Schedule—

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

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

- (a) any drain or works vested in Anglian Water under the Water Industry Act 1991;
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act;
- (c) a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act); and
- (d) any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

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

#### Apparatus within standard protection strips

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

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres;
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres;

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

#### **Alteration, extension, removal or relocation of apparatus**

4. The alteration, extension, removal or relocation of any apparatus shall not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2010 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such relocation are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

#### **Contingency arrangements**

5. Where in exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until Anglian Water has established, to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

#### **Creation of rights for Anglian Water**

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

#### **Alternative means of access to apparatus**

7. If in consequence of the exercise of the powers conferred by 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 Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

#### **Unmapped sewers, lateral drains or other apparatus**

8. If in consequence of the exercise of the powers conferred by this Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will be given to Anglian Water as soon as reasonably practicable and, if identified by Anglian Water as being within its responsibility, thereupon afforded the same protection as other Anglian Water assets.

### **Damage or interruption caused by construction**

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

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

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

**10.** An amount which apart from this paragraph would be payable to Anglian Water in respect of works by virtue of paragraph 9 of this Part 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 Anglian Water 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.

## **PART 2**

### **For the protection of the Environment Agency**

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

(2) In this part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation, and “construct” and “constructed” shall be construed accordingly;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring and any ancillary works constructed as a consequence of works carried out for drainage purposes;

“emergency” means a situation which—

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

“the fishery” means any waters containing fish and the fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“plans” includes sections, drawings, specifications, calculations and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

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- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
  - (c) cause obstruction to the free passage of fish or damage to the fishery; or
  - (d) affect the conservation, distribution or use of water resources; and
- “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

**2.—**(1) Before beginning to construct any specified work, the undertaker shall submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 11.

(3) Any approval of the Agency required under this paragraph—

- (a) shall not be unreasonably withheld or delayed;
- (b) shall be deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been required by the Agency for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable modifications to the plans as the Agency may request and such reasonable requirements as the Agency may make for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency shall use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

**3.** Without prejudice to the generality of paragraph 2 but subject always to the provision of that paragraph as to reasonableness, the requirements which the Agency may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

**4.—**(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, shall be constructed—

- (a) with all reasonable despatch in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker shall give to the Agency not less than 14 days’ notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency shall reasonably require, the undertaker shall construct all or part of the protective works so that they are in place prior to the construction of any specific work.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 8, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not, except in emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

5.—(1) Subject to sub-paragraph (6) the undertaker shall, from the commencement of the construction of the specified works, maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 8, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker shall cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency shall not, except in a case of emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(6) This paragraph does not apply to drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so.

6. Subject to paragraph 8, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage shall be made good by the

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undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

7.—(1) The undertaker shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 8, if within such time as may be reasonably practicable for that purpose, being not less than 28 days beginning with the date on which a notice of any damage or expected damage to a fishery is served under sub-paragraph (2) on the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the undertaker.

(4) Subject to paragraph 8, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker the reasonable cost of so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

8. The undertaker shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this part of this Schedule; and
- (c) the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

9.—(1) Without prejudice to the other provisions of this Part of this Schedule, the undertaker shall indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

(2) The Agency shall give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the agreement of the undertaker which agreement shall not be unreasonably withheld or delayed.

10. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

11.—(1) The undertaker must not in the exercise of the powers conferred by this Order unreasonably prevent the Agency’s access to and use of Haven Road.

(2) Where construction and operation of the authorised development reasonably requires interference with or obstruction of the free, uninterrupted and safe use of Haven Road or any traffic on Haven Road, a suitable alternative access shall be provided prior to and for the duration of any such interference.

## PART 3

### For the protection of Network Rail

1. The following provisions of this Schedule shall have effect unless otherwise agreed in writing between the undertaker and Network Rail and in the case of paragraph 10, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

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

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

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993<sup>(1)</sup>;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006<sup>(2)</sup>) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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

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

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

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(1) 1993 c.43.

(2) 2006 c.46.



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(b) any easement or other property interest held by or used for the benefit of Network Rail for the purposes of such railway or works, apparatus or equipment; and

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

3.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval shall not be unreasonably withheld or delayed but may be subject to reasonable conditions (while recognising that the engineer has sole discretion in matters relating to safety) and is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

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

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised project pursuant to this Order.

4.—(1) The undertaker shall not exercise the powers conferred by article 15 (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act as it applies to this Order by virtue of the 2008 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) This Order shall not authorise the acquisition or extinguishment of any existing right of Network Rail except with the agreement of Network Rail which shall not be unreasonably withheld.

5.—(1) The undertaker shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation of works, apparatus and equipment



necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail but at the expense of the undertaker, or if Network Rail so agrees such protective works shall be carried out by the undertaker at its own expense with all reasonable dispatch, and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

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

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker shall, notwithstanding any approval described in sub-paragraph (1)(a) but subject to sub-paragraph (3) below, make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the act, neglect or default of Network Rail or its servants, contractors or agents; or
- (b) any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the act, neglect or default of the undertaker or its servants, contractors or agents.

**7.** The undertaker shall—

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

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

**9.—(1)** If any permanent or temporary alterations or additions to railway property, or any protective works under paragraph 5(4), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening of any part of the authorised project that includes a specified work, in direct consequence of the construction of that specified work—

- (a) such alterations and additions may be carried out by Network Rail; and
- (b) if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker shall pay to Network Rail all costs reasonably and

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properly incurred in constructing those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires that part of the specified work to be constructed, Network Rail shall assume construction of that part of the specified work and the undertaker shall, notwithstanding any such approval of a specified work under paragraph 5(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer shall, in respect of the capitalised sum referred to in this paragraph and paragraph 10(1)(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

**10.—(1)** The undertaker shall repay to Network Rail all fees, costs, charges and expenses reasonably and properly incurred by Network Rail—

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

**11.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**12.** Any additional expenses which Network Rail may reasonably and properly incur in altering, reconstructing, maintaining or working railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous

notice of the commencement of such alteration, reconstruction, maintenance or working has been given to the undertaker, be repaid by the undertaker to Network Rail.

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

**14.—(1)** The undertaker shall pay to Network Rail all costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably and properly incurred by Network Rail—

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

and the undertaker shall indemnify Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (unless attributable to an act, neglect or default on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

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

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

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

(6) In this paragraph—

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

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

**15.** Network Rail shall, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 14 and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

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

- (a) any railway property shown on the work and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or and lands, works or other property referred to in this paragraph.

**17.** Nothing in the Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part 1 of the Railways Act 1993.

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

**19.** The undertaker shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 34 are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

## PART 4

### For the protection of National Grid

#### Application

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

#### Interpretation

**2.—(1)** In this Part of this Schedule—

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

“apparatus” means in respect of the various protected persons—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989(3), belonging to or maintained by that protected person;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

“commence” has the same meaning as 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 this definition and for the avoidance of doubt this includes works for the diversion or laying of services;

“functions” includes powers and duties;

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(3) 1989 c.29. Section 64 of that Act was amended by s.108 of, and Part II of Schedule 6 to, the Utilities Act 2000 (c.27). there are other amendments to the Act which are not relevant for the purposes of this Order.

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

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

“protected person” means National Grid Electricity Transmission plc and National Grid Gas plc (together National Grid); and

“removed” in a context referring to the removal of apparatus includes the disconnection and abandonment of apparatus (because it is no longer in service and in respect of gas apparatus it has been emptied of any gas) where the retention of decommissioned apparatus would not affect the construction and use of the scheduled works, and where apparatus is so retained the nominated undertaker will take on all future liabilities arising in relation to that apparatus.

3. Except for paragraphs 4 (apparatus in stopped up streets), 9 (retained apparatus: protection: electricity undertakers), 11 (expenses) and 12 (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 (as if this Order did not apply).

#### **Apparatus of protected persons in stopped up streets**

4.—(1) Where any street is permanently stopped up under this Order, any 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 specified 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 highway under the powers of article 10 (temporary stopping up of streets), or otherwise under this Order, a protected person shall be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

#### **Protective works to buildings**

5.—(1) The undertaker must exercise the powers conferred by this Order so 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—

- (a) any damage is caused 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 any protected person or any interruption in the supply of electricity, gas or water, as the case may be, by the protected person, 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
- (b) subject to sub-paragraph (2), must—
  - (i) make compensation to the protected person for any loss sustained by it; and
  - (ii) 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.

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(2) Nothing in this paragraph shall impose 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 a protected person or its contractors or workmen; 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**

6. This Order shall not authorise the acquisition or extinguishment of land or rights in land owned by a 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**

7.—(1) If, in the exercise of agreement reached in accordance with paragraph 6 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 of this Schedule and any right of a 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 question in accordance with sub-paragraph (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 in question 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed, and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a 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 8(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 in question 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 of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the protected person in question and the undertaker.

(5) The protected person in question 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 of this Schedule.

(6) The provisions in this Schedule will prevail where there is any inconsistency or duplication between its provisions relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus)

and the provisions of any existing easements, rights, agreements, and licences granted, used, enjoyed, or exercised by the protected person as of right or otherwise in relation to the apparatus.

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

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a 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 in question and shall be no less favourable on the whole to the protected person in question 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 paragraph 8(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 in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the 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: electricity undertakers**

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

(2) In relation to any works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or involve embankment works within 15 metres 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;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) The undertaker shall not commence the construction or renewal of 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 (5) or (7);
- (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.



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

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

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case shall the execution of any works commence until 56 days have elapsed following submission of any new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

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

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

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

### **Retained apparatus: protection: gas undertakers**

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

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

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

(3) The undertaker shall not commence the construction or renewal of 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 (5) or (7);

(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 sub-paragraph (5) or (7) 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 any protected person requires any protective works to be carried out either by the protected person itself or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected person's satisfaction prior to the carrying out of any works authorised by this Order (or any relevant part thereof) and the protected person in question shall give 56 days' notice of such works from the date of approval of a plan submitted in line with sub-paragraph (1) or (5) (except in an emergency).

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

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case shall the execution of any works commence until 56 days have lapsed following submission of any new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

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

(a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive's "HS(~G)47 Avoiding Danger from underground services".

## **Expenses**

**11.—(1)** Subject to the following provisions of this paragraph, the undertaker shall repay to a protected person on demand all charges, costs and expenses reasonably 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

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consequence of the execution of any such works as are referred to in this Part of 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 protected person elects to use compulsory purchase powers to acquire any necessary rights under paragraph 7(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 35 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the protected person in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the 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 a 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**

**12.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the 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 or a protected person under this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a protected person, or there is any interruption in any service provided, or in the supply of any goods, by any 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 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 a protected person on behalf of the undertaker or in accordance with a plan approved by a protected person or in accordance with any requirement of a 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) or (2) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a protected person, its officers, servants, contractors or agents.

(4) A 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.

## **Ground subsidence monitoring scheme in respect of protected person's apparatus**

**13.**—(1) No works within 100 metres of any other apparatus or alternative apparatus which are capable of interfering with or risking damage to a protected person's apparatus shall commence until a scheme for monitoring ground subsidence (referred to in this paragraph as "the monitoring scheme") has been submitted to and approved by the relevant protected person, such approval not to be unreasonably withheld or delayed.

(2) The ground subsidence monitoring scheme described in sub-paragraph (1) shall set out—

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

(3) The monitoring scheme required by sub-paragraphs (1) and (2) must be submitted within 56 days prior to the commencement of any works authorised by this Order or comprised within the authorised development. Any requirements of the protected person will be notified within 28 days

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of receipt of the monitoring scheme. Thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a “mitigation scheme”) shall be submitted to the protected person for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person save that the protected persons retains the right to carry out any further necessary protective works for the safeguarding of their apparatus and can recover any such costs in line with paragraph 11.

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority pursuant to Part 3 of Schedule 1 (requirements) the undertaker may submit a revised monitoring scheme or mitigation scheme to the protected person for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

### **Enactments and agreements**

14. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a 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**

15. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a protected person requires the removal of apparatus under paragraph 7(2) or a protected person makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of the protected person’s undertaking taking into account the undertaker’s desire for the efficient and economic execution of the authorised development, and the undertaker and each relevant protected person shall use their best endeavours to co-operate with each other for those purposes.

### **Access**

16. If in consequence of an agreement reached in accordance with paragraph 6 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**

17. Save for differences or disputes arising under paragraph 7(2) or (4), 8(1), 9 and 10 any difference or dispute arising between the undertaker and a protected person under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 35 (arbitration).

## PART 5

### For the protection of Centrica plc

#### Application

1. For the protection of Centrica the following provisions, unless otherwise agreed in writing between the undertaker and Centrica, have effect.

#### Interpretation

2. In this Part of this Schedule—

“apparatus” means Centrica’s pipeline or other electrical, gas or telecommunication infrastructure;

“Centrica” means Centrica plc and all of its subsidiaries and group companies including but not limited to Centrica KPS Limited, Centrica Storage Limited and Centrica Energy; and

“pipeline” means Centrica’s condensate pipeline shown magenta on the plan bearing reference LRS/PB/KPS/02 and dated October 2013.

#### Creation of rights for Centrica

3. Before extinguishing any existing rights for Centrica to keep, inspect, renew and maintain its apparatus on, over or in the Order land or to cross the Order land to access its apparatus, the undertaker, with the agreement of Centrica, shall create a new right, which is consistent with the existing right being extinguished to keep, inspect, renew and maintain the apparatus in the same location or a new right of access that is reasonably convenient for Centrica, such agreement not to be unreasonably withheld or delayed.

#### Apparatus

4.—(1) Save where paragraph 5 of this Part applies, no works are to commence within 10 metres of apparatus until a construction method statement to protect the apparatus has been prepared by the undertaker and submitted to and agreed with Centrica which shall not be unreasonably withheld or delayed but may be given subject to conditions.

(2) The construction method statement must include provisions in respect of—

(a) the location and methods of reinforcement of crossing points over the apparatus and restrictions on building and altering the ground level over the apparatus elsewhere;

(b) a mechanism for the enforcement of the undertaker’s use of designated crossing points over the apparatus and the agreed reinforcement methods; and

(c) adoption of a prior notification and consent regime which would require the undertaker to—

(i) seek Centrica’s consent to the carrying out of the proposed development within the vicinity of the apparatus, such consent not to be unreasonably withheld; and

(ii) notify Centrica of its intention to carry out any development within the vicinity of the apparatus, such notification to be provided at least 48 hours prior to any such development occurring; and

the authorised development must be carried out in accordance with the approved construction method statement.

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## **Removal of apparatus**

5.—(1) If, the undertaker acquires or overrides any interest in any land in which apparatus is laid, the apparatus shall not be removed under this Part of this Schedule and any right of Centrica to maintain the apparatus in that land shall not be extinguished until alternative apparatus has been constructed at the undertaker's expense, and is in operation to the reasonable satisfaction of Centrica in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of apparatus in that land, it shall give to Centrica 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 Centrica reasonably needs to remove the apparatus) the undertaker shall, subject to sub-paragraph (3), afford to Centrica to their satisfaction (taking into account paragraph 6(1) below) the necessary facilities and rights for—

- (a) the construction of an alternative apparatus in other land of the undertaker or Centrica; 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 Centrica, 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, Centrica 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 Centrica to seek compulsory purchase powers to this end unless it elects to so do.

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

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

(6) If works pursuant to sub-paragraph (1) include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Centrica any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, such sum shall be paid to the undertaker by the amount which represents that benefit.

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

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Centrica under (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Centrica than the facilities and rights enjoyed by it in respect of the pipeline to be removed and the terms and conditions to which those facilities and rights are subject, the matter shall be referred to arbitration and, the arbitrator



shall make such provision for the payment of compensation by the undertaker to Centrica as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Costs**

7. If for any reason or in consequence of the construction or operation of the authorised development, 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 Centrica, the undertaker must bear and pay the cost reasonably incurred by Centrica in making good any damage by reason or in consequence of any such damage.

### **Access to power station**

8. The undertaker shall exercise the powers conferred by this Order so as not to obstruct or render less convenient the access of Centrica to its Killingholme Power Station and any apparatus, and not less than 56 days prior to undertaking any works to Chase Hill Road, East Halton Road or Station Road (including traffic management measures, diversions, road closures and stopping up) will submit to Centrica details of the proposed location and duration of those works and comply with its reasonable requirements for ensuring its free and unrestricted use of those highways.

### **Requirement for agreement**

9. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any apparatus or override any easement or other interest of Centrica, acquire any land or other interest of Centrica or create any new rights over the same otherwise than by agreement of Centrica, which shall not be unreasonably withheld.