

SCHEDULE 7

PROTECTIVE PROVISIONS

PART 2

FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION

16. For the protection of WPD as referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and WPD, have effect.

17. In this Part of this Schedule—

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

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

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

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

“WPD” means Western Power Distribution (South Wales) PLC (company number 02366985) whose registered office is at Avonbank, Feeder Road, Bristol BS2 0TB;

“WPD Network” means WPD’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act; and

for the avoidance of doubt, all other terms are as defined in Part 1 of the Order.

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

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

20.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of WPD.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to WPD written notice of that requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph 20(2), WPD must on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its reasonable endeavours to obtain the alternative rights in other land in which the alternative apparatus is to be constructed.

(4) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 39 of the Order and after the grant to WPD of any alternative rights, proceed without unnecessary delay to construct and bring into operation the

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

(5) In respect of apparatus on plots numbered 1_MS and 3_MS in the book of reference and land plans—

- (a) if requested by the undertaker, WPD must remove any of its apparatus within a building on those plots (or relocate such apparatus as applicable) within 56 days of the undertaker making such a request, unless factors outside the control of WPD prevent such a removal or relocation within the 56 day time period (for the avoidance of doubt the 56 day period shall only begin once all necessary consents and permissions for the relevant removal or relocation have been granted); and
- (b) WPD and the undertaker may agree for the undertaker to remove or relocate as applicable any of such apparatus; and
- (c) following the removal or relocation by WPD or the undertaker (as applicable) under sub-paragraph 20(5)(a) or 20(5)(b), the undertaker may demolish such building(s).

21.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect any apparatus the removal of which has not been required by the undertaker under paragraph 20(2), the undertaker must submit to WPD a plan, section and description of the works to be executed. For the avoidance of doubt, if any works referred to require any diversion or require WPD to obtain any alternative rights, the undertaker shall give WPD sufficient notice to obtain any such alternative rights and shall not commence works of the type described unless or until any such alternative rights have been obtained.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph 21(1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph 21(3) by WPD for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

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

(4) If WPD in accordance with sub-paragraph 21(3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 16 to 20 apply as if the removal of the apparatus had been required by the undertaker under paragraph 20(2)).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than the reasonable period provided for in sub-paragraph 21(3) before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph 21(1) in a case of emergency but in that case it must give to WPD notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph 21(1)) in so far as is reasonably practicable in the circumstances.

22.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to WPD the proper and reasonable expenses reasonably incurred by WPD in, or in connection with, the inspection, removal, alteration or protection of any apparatus.

(2) The value of any apparatus removed under the provisions of this Part of the Schedule is to be deducted from any sum payable under sub-paragraph 22(1), that value being calculated after removal.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 39 of the Order 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 WPD by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph 22(3)—

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

(5) An amount which apart from this sub-paragraph would be payable to WPD in respect of works by virtue of sub-paragraph 22(1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on WPD 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.

23. The undertaker will indemnify WPD and keep them indemnified in respect of any losses, costs, claims or liabilities arising out of, or as a consequence of anything done under this Part of this Schedule.