

SCHEDULES

SCHEDULE 15

Article 43

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. The provisions of this Part have effect for the protection of statutory undertakers unless otherwise agreed in writing between the undertaker and the statutory undertaker in question.

2. In this Part—

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

“apparatus” means—

- (a) in the case of a statutory undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(1)), belonging to or maintained by the statutory undertaker for the purposes of electricity supply;
- (b) in the case of a statutory undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by the statutory undertaker for the purposes of gas supply;
- (c) in the case of a statutory undertaker within paragraph (c) of the definition of that term, mains, pipes or other water apparatus belonging to or maintained by the statutory undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991(2); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

(1) 1989 c.29.
(2) 1991 c.56.

Changes to legislation: There are currently no known outstanding effects for the The National Grid (Hinkley Point C Connection Project) Order 2016, SCHEDULE 15. (See end of Document for details)

“statutory undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽³⁾;
- (c) a water undertaker within the meaning of the Water Industry Act 1991;
- (d) a sewerage undertaker;

for the area of the authorised development, and in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by Part 3 of the 1991 Act.

4. Despite any provision in this Order or anything shown on the Land Plans, the undertaker must not acquire any apparatus otherwise than by agreement.

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

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question 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 (2), the statutory undertaker in question, must on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed

(4) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 49 (arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (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 this Part.

(5) Despite anything in sub-paragraph (4), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the statutory undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(6) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

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

(3) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

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

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraph 5 applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph (2) of that paragraph.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, 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 (1) in a case of emergency but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

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

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

(3) If in accordance with 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,

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 49 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 statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus 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 a statutory undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker in question 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

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

8.—(1) The provisions of this Part have effect for the protection of operators unless otherwise agreed in writing between the undertaker and the operator in question.

(2) In this Part—

“2003 Act” means the Communications Act 2003;

^{F1} ...

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

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

“electronic communications code network” means—

- (a) so much of an electronic communications network or [^{F2}infrastructure system] provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

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

[^{F3}“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code;]

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

Textual Amendments

- F1** Words in Sch. 15 Pt. 2 para. 8(2) omitted (28.12.2017) by virtue of [The Communications Act 2003 and the Digital Economy Act 2017 \(Consequential Amendments to Secondary Legislation\) Regulations 2017 \(S.I. 2017/1011\)](#), reg. 1(1), [Sch. 4 para. 57\(2\)\(a\)\(i\)](#)
- F2** Words in Sch. 15 Pt. 2 para. 8(2) substituted (28.12.2017) by [The Communications Act 2003 and the Digital Economy Act 2017 \(Consequential Amendments to Secondary Legislation\) Regulations 2017 \(S.I. 2017/1011\)](#), reg. 1(1), [Sch. 4 para. 57\(2\)\(a\)\(ii\)](#)
- F3** Words in Sch. 15 Pt. 2 para. 8(2) inserted (28.12.2017) by [The Communications Act 2003 and the Digital Economy Act 2017 \(Consequential Amendments to Secondary Legislation\) Regulations 2017 \(S.I. 2017/1011\)](#), reg. 1(1), [Sch. 4 para. 57\(2\)\(a\)\(iii\)](#)

⁽⁴⁾ See section 106.

9. The exercise of the powers in article 33 (statutory undertakers) is subject to [F4Part 10 of Schedule 3A to the Communications Act 2003].

Textual Amendments

F4 Words in Sch. 15 Pt. 2 para. 9 substituted (28.12.2017) by The Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Secondary Legislation) Regulations 2017 (S.I. 2017/1011), reg. 1(1), Sch. 4 para. 57(2)(b)

10.—(1) Subject to sub-paragraphs (2) to (3), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works, any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or other property of an operator, the undertaker must bear and pay the cost reasonably and properly incurred by the operator in making good such damage.

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

(3) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 49 (arbitration).

11. This Part does not apply to—

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

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

PART 3

PROTECTION FOR HIGHWAYS AND TRAFFIC

13. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and the relevant highway authority;

14.—(1) In this Part—

“approved”, in relation to plans, means approved, deemed to be approved or settled by arbitration in accordance with this Part;

“plans” includes sections, designs, drawings, specifications, soil reports, staging proposals, programmes, calculations, methods of construction, risk assessments and details of the extent, timing and duration of any proposed occupation of any highway;

“property of the relevant highway authority” means any apparatus or street furniture of the relevant highway authority affixed to or placed under any highway;

“relevant highway authority”, in relation to a highway, means the highway authority for the area in which the highway is situated.

(2) Wherever in this Part provision is made with respect to the approval or consent of the relevant highway authority, that approval or consent must be in writing and may be given subject to such reasonable terms and conditions as the relevant highway authority may require.

15. In exercising the powers conferred by this Order in relation to any highway, the undertaker must have regard to the potential disruption of traffic which may be caused and must seek to minimise such disruption so far as is reasonably practicable.

16.—(1) The undertaker must not, without the consent of the relevant highway authority, construct any part of the works authorised by this Order under, or within 50 metres of, the surface of any highway which comprises a carriageway except in accordance with plans submitted to, and approved by, the relevant highway authority.

(2) If within 28 days after such plans have been submitted the relevant highway authority has not approved or disapproved them, it is deemed to have approved the plans as submitted.

(3) In the construction of any part of the said works under a highway no part of it may, except with the consent of the relevant highway authority, be so constructed as to interfere with the provision of proper means of drainage of the surface of the highway or be nearer than 2 metres to the surface of the highway.

17. The undertaker must not under the powers conferred by or under this Order without the consent of the relevant highway authority, acquire, enter upon or take or use whether temporarily or permanently, or acquire any new rights over, any part of any highway, including subsoil beneath the surface of any highway.

18.—(1) Before commencing the construction of, or the carrying out of any work which involves interference with a highway, the undertaker must submit to the relevant highway authority for its approval plans, drawings and particulars (in this paragraph referred to as “plans”) relating to the works, and the works may not be carried out except in accordance with the plans submitted to, and approved by, the relevant highway authority.

(2) If within 28 days after the plans have been submitted the highway authority has not approved or disapproved them, it is deemed to have approved the plans as submitted.

19. Any officer of the relevant highway authority duly appointed for the purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the works authorised by this Order which—

- (a) is in, over or under any highway, or
- (b) which may affect any highway or any property of the relevant highway authority,

during the carrying out of the work, and the undertaker must give to the officer all reasonable facilities for such inspection and, if the officer is of the opinion that the construction of the work is attended with danger to any highway or to any property of the relevant highway authority on or under any highway, the undertaker must adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway.

20.—(1) The undertaker must not alter, disturb or in any way interfere with any property of the relevant highway authority on or under any highway, or the access thereto, without the consent of the relevant highway authority, and any alteration, diversion, replacement or reconstruction of any such property which may be necessary is to be made by the relevant highway authority or the undertaker as the relevant highway authority thinks fit, and the expense reasonably incurred by the relevant highway authority in so doing must be paid to the relevant highway authority by the undertaker.

(2) If within 28 days after a request for consent has been submitted the relevant highway authority has not given or refused such consent, it is deemed to have consented to the request as submitted.

21. The undertaker must not remove any soil or material from any highway except so much as must be excavated in the carrying out of the works authorised by this Order.

22.—(1) If the relevant highway authority, after giving to the undertaker not less than 28 days' notice (or, in case of emergency, such notice as is reasonably practicable) of its intention to do so, incurs any additional expense in the signposting of traffic diversions, in the diversion of footpaths, in the taking of other measures in relation to that or in the repair of any highway by reason of the diversion to that traffic from a road of a higher standard, in consequence of the construction of the works authorised by this Order, the undertaker must pay to the relevant highway authority the amount of any such expense reasonably so incurred.

(2) An amount which apart from this sub-paragraph would be payable to the relevant highway authority by virtue of this paragraph in respect of the repair of any highway must, if the highway fell or would have fallen due for repair as part of the maintenance programme of the relevant highway authority at any time within 10 years of the repair being carried out by the undertaker, so as to confer on the relevant highway authority financial benefit (whether by securing the completion of overdue maintenance work for which the relevant highway authority is liable or by deferment of the time for such work in the ordinary course), be reduced by the amount which represents that benefit.

23.—(1) The undertaker must not, except with the consent of the relevant highway authority,—

- (a) deposit any soil or materials, or stand any plant, on or over any highway so as to obstruct or render less safe the use of the highway by any person; or
- (b) deposit any soil or materials on any highway outside a hoarding.

(2) If within 28 days after request for it the consent of the relevant highway authority is neither given nor refused, it is deemed to have been given.

(3) The expense reasonably incurred by the relevant highway authority in removing any soil or materials deposited on any highway in contravention of this paragraph must be paid to the relevant highway authority by the undertaker.

24. The undertaker must not, except with the consent of the relevant highway authority, erect or retain on or over a highway to which the public continues to have access any scaffolding or other structure which obstructs the highway.

25. The undertaker must, if reasonably so required by the relevant highway authority, provide and maintain to the reasonable satisfaction of the relevant highway authority, during such time as the undertaker may occupy any part of a highway for the purpose of the construction of any part of the works authorised by this Order, temporary bridges and temporary ramps for vehicular or pedestrian traffic over any part of the works or in such other position as may be necessary to prevent undue interference with the flow of traffic in the highway.

26.—(1) Where any part of any highway has been broken up or disturbed by the undertaker and not permanently stopped up or diverted, the undertaker must make good the subsoil, foundations and surface of that part of the highway to the reasonable satisfaction of the relevant highway authority, and must maintain the same to the reasonable satisfaction of the relevant highway authority for such time as may reasonably be required for the permanent reinstatement of the highway. No such works may take place except with the consent of the relevant highway authority.

(2) The reinstatement of that part of the highway must be carried out by the undertaker to the reasonable satisfaction of the relevant highway authority in accordance with such requirements as to specification of material and standards of workmanship as may be prescribed for equivalent reinstatement work by regulations made under section 71 of the 1991 Act.

27. If any damage to any highway or any property of the relevant highway authority on or under any highway is caused by, or results from, the construction of any work authorised by this Order

Changes to legislation: There are currently no known outstanding effects for the The National Grid (Hinkley Point C Connection Project) Order 2016, SCHEDULE 15. (See end of Document for details)

or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon such work, the undertaker may, in the case of damage to a highway, make good such damage to the reasonable satisfaction of the relevant highway authority and, where the undertaker does not make good, or in the case of damage to property of the relevant highway authority, the undertaker must pay compensation to the relevant highway authority. No such works may take place except with the consent of the relevant highway authority.

28. The fact that any act or thing may have been done in accordance with plans approved by the relevant highway authority does not (if it was not attributable to the act, neglect or default of the relevant highway authority, any person in its employ, its contractors or its agents) exonerate the undertaker from any liability, or affect any claim for damages, under this Part or otherwise.

29. Any difference arising between the undertaker and the relevant highway authority under this Part (other than in difference as to the meaning or construction of this Part) must be resolved by arbitration under article 49 (arbitration).

PART 4

PROTECTION FOR RAILWAY INTERESTS

30. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Network Rail.

31. In this Part—

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

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

“network licence” means the network licence, as amended from time to time, granted to Network Rail by the Secretary of State in exercise of the powers in section 8 of the Railways Act 1993⁽⁵⁾;

“Network Rail” means Network Rail Infrastructure Limited (registered company number 2904587) 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⁽⁶⁾) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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

“railway property” means—

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

⁽⁵⁾ 1993 c. 43.

⁽⁶⁾ 2006 c. 40.

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

“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.

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

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

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

33.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 49 (arbitration).

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

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it 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 approval of the plans, the engineer may specify any protective works (whether temporary or permanent) which in the opinion of the engineer must 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 them (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified work), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case with all reasonable dispatch, and the undertaker must not commence the construction of

the specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

34.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 33(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 33;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

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

(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

35. The undertaker must—

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

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

37.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 12 months after the completion of that work, in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail; and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations 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 decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work, and the undertaker must, notwithstanding any such approval of a specified work under paragraph 33(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 must, in respect of the capitalised sums referred to in this paragraph and paragraph 38(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 the saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

38. The undertaker must pay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 33(3) or in constructing any protective works under paragraph 33(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 the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, guards and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, need to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

39.—(1) In this paragraph—

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

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

(2) This paragraph applies to EMI only to the extent that the EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 33(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter continue

Changes to legislation: There are currently no known outstanding effects for the The National Grid (Hinkley Point C Connection Project) Order 2016, SCHEDULE 15. (See end of Document for details)

to consult with Network Rail (both before and after formal submission of plans under paragraph 33(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to paragraph (a).

(5) In any case where it is established that EMI can reasonably be prevented only by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but Network Rail may, in its reasonable discretion, select the means of prevention and the method of their execution, and in relation to such modifications paragraph 33(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI, then the undertaker must immediately upon receipt of notification by Network Rail of the EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing the EMI until all measures necessary have been taken to remedy the EMI by way of modification to the source of the EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of the EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of the EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or the EMI.

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

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 34.

(9) For the purpose of paragraph 38(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that sub-paragraph.

(10) In relation to any dispute arising under this paragraph, the reference in article 49 (arbitration) to the Secretary of State must be read as a reference to the President of the Institution of Engineering and Technology.

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

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

42. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that at least 56 days' prior notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be paid by the undertaker to Network Rail.

43.—(1) The undertaker must—

- (a) pay to Network Rail all reasonable and proper costs, charges, damages and expenses not otherwise provided for in this Part (but subject to the provisions of this paragraph) which may be occasioned to or reasonably incurred by Network Rail by reason of—
 - (i) the construction or maintenance of a specified work or the failure of such a work; or
 - (ii) 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
- (b) indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission.

(2) The fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the supervision of the engineer does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under sub-paragraph (1).

(3) Network Rail must—

- (a) give the undertaker written notice of any such claims or demands as soon as reasonably possible after Network Rail become aware of any such claims or demands;
- (b) not admit liability or make any offer to settle or settle or compromise any such claim or demand without the prior consent of the undertaker (which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand);
- (c) take all reasonable steps to mitigate any liabilities relating to such claims or demands; and
- (d) keep the undertaker informed in relation to the progress of any such claims and demands and pay due regard to the undertaker's reasonable representations in relation to them.

(4) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, save that the sums payable by the undertaker under that sub-paragraph include a sum equivalent to the relevant costs in circumstances where—

- (a) Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator; and
- (b) the existence of that agreement and the extent of Network Rail's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the undertaker,

but not otherwise.

(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the amount, timing or method of payment of the relevant costs in respect of that train operator, Network

Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (4) which relates to the relevant costs of that train operator.

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

(7) In this paragraph—

“relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by a 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);

“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.

44. Network Rail must, 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 Part 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 Part.

45. In the assessment of any sums payable to Network Rail under this Part, no account must be taken of any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

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

- (a) any railway property shown on the Works Plans and Land Plans and described in the Book of Reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

47. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

48. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 44 (certification of plans etc.) 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 5

PROTECTION FOR FIRST CORPORATE SHIPPING LIMITED

49. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and BPC.

Definitions

50.—(1) In this Part—

“access works” means works—

- (a) on, over or under or otherwise affecting a private street or a dock public road, including the kerbs, verges and carriageway of such street;
- (b) to alter, modify, improve or create accesses to or from any private street or dock public road or any other part of BPC’s land, including, without limitation, the construction of access bellmouths and haul roads; and
- (c) to position or install plant, equipment or scaffolding on or over any private street or a dock public road,

and includes, without limitation on the scope of the foregoing, any works under article 10 (street works) or article 12 (power to alter layout, etc. of streets) in respect of or affecting any private street or any dock public road;

“ancillary work” means so much of any of the authorised development as is situated on, over, across, or under BPC’s land and comprises—

- (a) fencing and lighting measures in relation to permanent buildings, structures and apparatus and in relation to temporary working areas and construction compounds;
- (b) piling;
- (c) the erection and use of scaffolding;
- (d) temporary works (including erecting temporary buildings) and mitigation works, including, without limitation, the provision and maintenance of landscaping and replacement planting pursuant to this Order; and
- (e) those parts of Work No. 4P comprising excavations for the purpose of installing underground electric or fibre-optic cables, the installation of underground ducts and backfilling of excavations;

“BPC” means First Corporate Shipping Limited (registered company number 2542406), trading as The Bristol Port Company, being the statutory harbour authority and competent harbour authority for the Port;

“BPC’s land” means the whole and each of every part of all the leasehold and freehold land and rights and the benefit of all covenants, owned by or vested in BPC at Avonmouth, Chittening and Portbury—

- (a) on, under, over or in respect of which any powers conferred by this Order may be exercised; or
- (b) on, under or over which there is situated anything over or in respect of which any such powers may be exercised,

and includes, without limitation on the scope of the foregoing, any private street;

“construction access rights” means any and all powers conferred on the undertaker by this Order to exercise temporary powers of access over any land with or without vehicles, plant and equipment including, without limitation on the scope of the foregoing, any ancillary powers to remove buildings, structures, pylons and vegetation from that land and to construct works for the purpose of providing a means of access, and including all such powers whether conferred and described in the Book of Reference as rights or subordinate rights;

“dock access network” means each street set out in column (2) of the following table to the extent that it is maintainable highway—

(1) <i>Local Authority Area</i>	(2) <i>Name of Street</i>
North Somerset Council	A369 Portbury Hundred

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(1) <i>Local Authority Area</i>	(2) <i>Name of Street</i>
	Sheepway (including Station Road) Wharf Lane
Bristol City Council	West Town Road Gloucester Road King Road Avenue Crowley Way Portway A403 St Andrew’s Road, A403 Smoke Lane, A403 Chittening Road and A403 Severn Road Severn Road Ableton Lane Minors Lane
North Somerset Council and Bristol City Council	Motorway M5

“dock public road” means each [F5 street set out in column (2)] of the following table to the extent that it is maintainable highway—

(1) <i>Local Authority Area</i>	(2) <i>Name of Street</i>
North Somerset Council	Marsh Lane Redland Avenue Gordano Way Garonor Way Royal Portbury Dock Road Portbury Way

“drainage works” means works to create, alter or remove any culvert or other crossing over, under or affecting any watercourse or drainage ditch on, over or under BPC’s land;

“maintainable highway” has the same meaning as in section 86(1) of the 1991 Act;

“plans” includes sections, designs, drawings and specifications and construction methodologies;

“Port” means the port and harbour of Bristol;

“powers of temporary possession” means—

- (a) in relation to National Grid, the powers conferred by article 29 (temporary use of land by National Grid); and
- (b) in relation to WPD, the powers conferred by article 30 (temporary use of land by WPD);

“private access” means each of the private streets within the districts of [^{F6}North Somerset Council and Bristol City Council (respectively referred] to in this Order as The Drove and Victoria Road);

“private street” means any street on BPC’s land which is not a maintainable highway;

“works programme” means the final programme for the execution of the authorised development on, over or under BPC’s land presented to BPC under paragraph 57, together with such amendments to that programme as may from time to time be agreed in writing between BPC and National Grid, each acting reasonably and without delay.

(2) In this Part, references to a requirement to consult include that consultation must take place in good faith and in a timely manner with the provision of all reasonably necessary information and that the party concerned must act reasonably in taking into account the reasonable comments made by the other party in response.

(3) In this Part, references to BPC’s consent, approval or agreement, are to BPC’s prior consent, approval or agreement given in writing.

Textual Amendments

F5 Words in Sch. 15 para. 50(1) substituted (21.7.2017) by [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), art. 1, **Sch.**

F6 Words in Sch. 15 para. 50(1) substituted (21.7.2017) by [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), art. 1, **Sch.**

Compliance with design drawings

51.—(1) Despite any provision in this Order, but subject to sub-paragraph (2), the undertaker must use its best endeavours to ensure that all parts of the authorised development which are to be constructed on, over or under BPC’s land are constructed and installed in the lines and situations shown on the Works Plans.

(2) In carrying out the authorised development for which it is granted development consent by this Order on, over or under BPC’s land the undertaker may deviate laterally from the lines and situations of the authorised development shown on the Works Plans to a maximum extent of 5 metres in each direction (or to such greater or lesser extent as may be agreed between BPC and the undertaker, but subject always to article 5(1)(a) (limits of deviation)).

(3) Despite any provision in this Order, no part of the authorised development comprising a conductor forming part of any 132kV or 400kV overhead electrical line must be constructed or installed on or over any part of BPC’s land at a level which is more than 30 centimetres lower than the level of that conductor as shown on the design drawings.

(4) Despite any provision in this Order, in constructing the authorised development the undertaker must not construct or install any relevant pylon of a design other than that specified for that relevant pylon in the design drawings.

(5) In sub-paragraph (4) a “relevant pylon” means a pylon located on or over BPC’s land or on or over any other land if any conductor associated with that pylon will be situated on or over BPC’s land.

Access, streets and public rights of way

52.—(1) The undertaker must not exercise any powers under article 10 (street works) in respect of any private access.

(2) The undertaker must not exercise any powers under —

Changes to legislation: There are currently no known outstanding effects for the The National Grid (Hinkley Point C Connection Project) Order 2016, SCHEDULE 15. (See end of Document for details)

- (a) article 12(1) (power to alter layout, etc. of streets) in respect of or so as to affect any private access; or
 - (b) article 12(2) or article 14 (access to works) in respect of or so as to affect any private street or any dock public road or any part of BPC's land.
- (3) The undertaker must before commencing construction of any access works supply to BPC proper and sufficient plans of that work for the approval of BPC, and the access works must not be commenced or executed except in accordance with such plans as have been approved by BPC.
- (4) In carrying out any access works, the undertaker must not so far as reasonably practicable interfere with or obstruct the free, uninterrupted and safe use by other traffic of any street or interfere with street furniture, signage and lighting masts.
- (5) The undertaker must not exercise any powers under article 13 (temporary stopping up of streets and public rights of way) or article 40 (traffic regulation) in respect of—
- (a) any private street;
 - (b) any dock public road without BPC's consent;
 - (c) public right of way LA/15/22 except in relation to that part lying between point RW144 (as shown on Section F, Sheet 4 of the access and rights of way plans) and the point on the right of way 180 metres south of the southernmost limit of deviation for Work No. 4P as shown on Works Plan Section F, Sheet 4;
 - (d) any part of public rights of way LA/15/15 or LA/15/22 or any part of any other public right of way specified in Schedule 7 which is on BPC's land unless it has first consulted with BPC;
 - (e) any other public right of way on BPC's land comprising a footpath, bridleway or cycle path without BPC's consent; and
 - (f) any public right of way on BPC's land comprising a footpath, bridleway or cycle path unless a suitable diversion has been provided, to be approved by BPC or, if any restrictions on use short of closure will be imposed, unless BPC has approved the nature and extent of those restrictions.
- (6) The undertaker must, before submitting any relevant proposals to the relevant highway authority for approval under the provisions of this Order, consult with BPC in relation to—
- (a) any proposed exercise of powers under article 13 ^[F7]or] 40 affecting any part of the dock access network; and
 - (b) any proposed variations or extensions to such proposals.
- (7) Despite any provision of this Order, the undertaker must not, except with the agreement of BPC, exercise any power under article 13 or 40 to use or to authorise the use of any private street or public right of way on BPC's land or any dock public road as a temporary working site or as a parking place.
- (8) The undertaker must not exercise any powers under articles 10, 12, 13, 14 or 40 over or in respect of any part of BPC's land or any dock public road or any part of the dock access network after completion of construction of the authorised development.
- (9) ^[F7]Except in relation to sub-paragraph (7), where BPC is asked] to give its consent, approval or agreement under this paragraph, such consent, approval or agreement must not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

Textual Amendments

- F7** Words in Sch. 15 para. 52 substituted (21.7.2017) by [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), art. 1, [Sch.](#)

Watercourses and drainage

53.—(1) No part of any impounded dock at the Port is included within the definition of “watercourse” for any purpose of this Order.

(2) The undertaker must not without BPC’s consent (such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions)—

- (a) use or discharge water into any watercourse, sewer or drain belonging to BPC or in respect of which BPC has rights of use; or
- (b) make any crossing over or culvert, opening or connection into any watercourse, sewer or drain belonging to BPC or in respect of which BPC has rights of use or lay down, take up or alter any pipes for that purpose.

(3) Without limitation on the scope of sub-paragraph (2), any consent given by BPC under this paragraph—

- (a) may be given subject to reasonable conditions as to the quantities of water permitted to be discharged and as to the duration of any use of the relevant watercourse, sewer or drain by the undertaker; and
- (b) does not obviate the need for the undertaker to obtain any further consents required in relation to the activity concerned.

(4) In the exercise of any power under article 16 (discharge of water), the undertaker must not damage or interfere with the bed or banks of any watercourse in, on, over or under BPC’s land.

(5) The undertaker must before commencing construction of any drainage works supply to BPC proper and sufficient plans of that work for the approval of BPC, such approval not to be unreasonably withheld or delayed, and the drainage works must not be commenced or executed except in accordance with such plans as have been approved by BPC.

(6) Paragraph (2) of article 16 does not apply to any dispute relating to any watercourse, sewer or drain belonging to BPC or in respect of which BPC has rights of use.

Surveys

54.—(1) The undertaker must not exercise any powers conferred by article 18 (authority to survey and investigate the land) in respect of any of BPC’s land—

- (a) outside the Order limits except to the extent that BPC agrees for the purpose of carrying out non-intrusive surveys, investigations and monitoring only;
- (b) other than to the extent that the exercise of such powers is necessary in connection with carrying out the authorised development; and
- (c) other than by prior agreement with BPC on each and every occasion, such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions, and on at least 14 days’ notice.

(2) When requesting BPC’s agreement to access under sub-paragraph (1), the undertaker must provide to BPC full details of the land to which access is requested, the activities proposed (including risk assessments and method statements and intended duration of the activities), the identity of the persons who will undertake them and any apparatus that might be left on the affected land.

- (3) BPC is, without limitation on the scope of sub-paragraph (1)(c)—
- (a) entitled to refuse access as requested by the undertaker on any occasion for operational reasons, in which case BPC must act reasonably and without delay in seeking to offer alternative arrangements; and
 - (b) entitled as a condition of its agreement on any occasion to require the production of evidence of the existence of adequate insurance with insurers of repute, the proceeds of which will be available to cover all liability, costs, claims, expenses and demands which may arise as a result of that access.
- (4) The undertaker must remove any equipment left on, over or under BPC's land as soon as reasonably possible after completion of the relevant surveys and investigations.
- (5) The undertaker must, at its own expense, deliver to BPC as soon as reasonably practicable after their production on a non-reliance basis copies of all survey and ground investigation reports carried out under the powers conferred by article 18 in respect of BPC's land.

Use of land and execution, maintenance and use of the authorised development

55.—(1) Despite any provision of this Order or anything shown on the Land Plans, the undertaker must not except with the agreement of BPC ^{F8} ... exercise any construction access rights over BPC's land other than in respect of parcels G150, G151, G152 and G155 as set out in Section G of the Book of Reference or otherwise use any part of BPC's land for the purpose of gaining access to any part of the authorised development or any other land or in connection with the carrying out, inspection or maintenance of the authorised development.

(2) The undertaker must promptly and at its cost and expense make good any and all damage and wear and tear caused to any part of BPC's land which is used by the undertaker for the purpose of gaining access to the authorised development or any other land or in connection with the carrying out, inspection or maintenance of the authorised development and must restore all such land (together with all associated structures, signs and barriers) to at least as good a condition as they were in before the undertaker's use started including making good the subsoil, foundations and surface of that land.

(3) If required to do so by BPC (acting reasonably), the undertaker must [^{F9}at its cost and expense] procure that surveys are carried out to a specification approved by BPC (acting reasonably) to show the condition of the relevant land to be used for access (together with all associated structures, signs and barriers) before the undertaker's use of them begins and after that use ends.

(4) If required to do so by BPC (acting reasonably), the undertaker must permit BPC to inspect the execution of all works of reinstatement being carried out under this paragraph in order to ensure compliance by the undertaker with the requirements of this paragraph.

Textual Amendments

F8 Words in Sch. 15 para. 55(1) omitted (21.7.2017) by [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), art. 1, **Sch.**

F9 Words in Sch. 15 para. 55(3) inserted (21.7.2017) by [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), art. 1, **Sch.**

56. The undertaker must before commencing the construction of any ancillary work supply to BPC proper and sufficient plans of that work for the approval of BPC, such approval not to be unreasonably withheld or delayed, and the ancillary work must not be commenced or executed except in accordance with such plans as have been approved in writing by BPC.

57.—(1) Neither National Grid nor WPD must exercise any powers of temporary possession—

- (a) over or in respect of parcels 326 to 330 (inclusive) as set out in Section F of the Book of Reference and parcels 70 to 81, 86 and 171 to 177 (all references inclusive) as set out in Section G of the Book of Reference;
 - (b) other than in accordance with such conditions, terms and measures as may be agreed by BPC for the purpose of this sub-paragraph; and
 - (c) (without limitation on the scope of sub-paragraph (1)(b)) unless National Grid or WPD has first complied with the procedures and measures set out in this paragraph.
- (2) National Grid must present to BPC not less than 6 months before the intended date of commencing construction the draft programme for the execution of each part of the authorised development on BPC's land.
- (3) National Grid must consult with BPC in relation to the draft programme and must present its final programme for the execution of the authorised development on BPC's land to BPC not less than 3 months before the intended date of commencing construction.
- (4) Neither National Grid nor WPD must enter on or take temporary possession of any part of BPC's land unless it has served at least 8 weeks' written notice on BPC of its intended entry onto that part.
- (5) Neither National Grid nor WPD must serve notice of intended entry under article 29(2) (temporary use of land by National Grid) or 30(2) (temporary use of land by WPD) on any owner or occupier of any part of BPC's land (other than BPC) before the expiry of 4 weeks from the date of service on BPC of notice under sub-paragraph (4) in relation to that same part.
- (6) In this paragraph, "intended date of commencing construction" means the first date on which National Grid or WPD wishes to commence construction of any part of the authorised development on, under or over any part of BPC's land.

58.—(1) Neither National Grid nor WPD must exercise any powers of temporary possession in respect of any part of BPC's land unless such exercise is provided for in and is in accordance with the works programme.

(2) In the exercise of any powers of temporary possession in respect of any part of BPC's land and in the commencement and execution of the authorised development on BPC's land, National Grid and WPD must—

- (a) use all reasonable endeavours to comply with the works programme;
- (b) proceed diligently with the works affecting each part of BPC's land;
- (c) use all reasonable endeavours to give up possession of each part of BPC's land in accordance with paragraph 59 on or before the anticipated date for so doing applicable to that part set out in the works programme; and
- (d) notify BPC in writing of the completion of the relevant part of the authorised development affecting each part of BPC's land within 7 days of its completion.

(3) In the exercise of any powers of temporary possession in respect of any part of BPC's land neither National Grid nor WPD must—

- (a) use any part of BPC's land other than for the purpose identified in the works programme as applicable to that part; or
- (b) demolish any buildings other than any electric line, electrical plant, structures, pylons or apparatus to be demolished as part of Work No. 4G or Work No. 4P.

59.—(1) Unless BPC agrees otherwise, National Grid and WPD must give up possession of each part of BPC's land in respect of which any powers of temporary possession have been exercised within 3 months of completion of construction of the relevant part of the authorised development for which possession of that land was required as specified in the works programme, and having

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completed all works of removal, restoration and reinstatement in respect of that land required by this Order.

(2) Without limitation on the scope of their respective obligations under paragraphs (5) and (6) of article 29 and paragraphs (5) and (6) of article 30, National Grid or WPD must consult with BPC in relation to the proposed extent of the intended removal of foundations supporting pylons on BPC's land which are to be removed as part of Work No. 4G and Work No. 4P.

(3) Despite any provision of this Order, before giving up possession of any part of BPC's land in respect of which any powers of temporary possession have been exercised, National Grid and WPD must^{F10}, all to BPC's reasonable satisfaction] —

- (a) remove all temporary works from that land;
- (b) where foundations (including piles) which had been placed in that land to support pylons, electric lines or other apparatus belonging to National Grid or WPD are removed from BPC's land pursuant to Schedule 1 (authorised development), to the extent reasonably practicable, reinstate the ground to match the surrounding area in relation to both specification and appearance; and
- (c) otherwise restore and reinstate the land and any buildings and structures on the land to the condition they were in before possession was taken and make good any damage caused to surrounding land^{F11}

Textual Amendments

- F10** Words in Sch. 15 para. 59(3) inserted (21.7.2017) by [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), art. 1, **Sch.**
- F11** Words in Sch. 15 para. 59(3)(c) omitted (21.7.2017) by [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), art. 1, **Sch.**

60. In the execution and maintenance of the authorised development under this Order, the undertaker must take all steps and measures reasonably available to it to minimise as far as is reasonably practicable the impact of construction and other activities on BPC's land, on the operation of the Port and on the activities of the owners and occupiers of that land and customers of the Port.

Textual Amendments

- F8** Words in Sch. 15 para. 55(1) omitted (21.7.2017) by [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), art. 1, **Sch.**
- F9** Words in Sch. 15 para. 55(3) inserted (21.7.2017) by [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), art. 1, **Sch.**
- F10** Words in Sch. 15 para. 59(3) inserted (21.7.2017) by [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), art. 1, **Sch.**
- F11** Words in Sch. 15 para. 59(3)(c) omitted (21.7.2017) by [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), art. 1, **Sch.**

BPC's apparatus

61.—(1) Despite any provision of this Order or anything shown on the Land Plans, the undertaker must not remove or reposition any of BPC's apparatus other than with BPC's consent, such consent not to be unreasonably withheld or delayed.

(2) In this paragraph "BPC's apparatus" means all and any gas, oil and water pipes, water tanks, cisterns, drains and drainage works, sewers, pumps, electric and communication wires, cables and plant, ducts, conduits, governors, transformers, meters and any other service media, surface water

interceptors (and whether in all cases for drainage, gas, oil, water, electricity, telephone, television, data and information transmission or any other service) on BPC's land or used by BPC in connection with its statutory undertaking.

[^{F12}Acquisition and use of land

61A. The undertaker must not exercise the powers conferred by—

- (a) article 17 (protective work to buildings);
- (b) article 19 (compulsory acquisition of land);
- (c) article 22 (compulsory acquisition of rights);
- (d) article 23 (extinguishment and suspension of private rights);
- (e) article 26 (acquisition of subsoil or airspace only);
- (f) article 28 (rights under or over streets); or
- (g) article 31 (temporary use of land for maintaining the authorised development),

over or in respect of any of BPC's land unless the exercise of such powers is with the consent of BPC.

Textual Amendments

F12 Sch. 15 paras. 61A, 61B inserted (21.7.2017) by [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), arts. 1, 2

Procedure regarding certain approvals etc.

61B. Article 46(3) and paragraphs 3, 4 and 5 of Schedule 4 (discharge of requirements) will not apply in relation to any consent, agreement or approval from BPC required under this Order.]

Textual Amendments

F12 Sch. 15 paras. 61A, 61B inserted (21.7.2017) by [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), arts. 1, 2

Trees and other vegetation

[^{F13}61C]. Despite any provision of this Order, in the exercise of any powers under this Order and in the construction, maintenance and use of the authorised development, the undertaker must not remove, cut back, fell or lop any hedge, tree, shrub or other vegetation on BPC's land unless it has first consulted with BPC as to the works required and the extent, if any, of any replacement planting proposed or required.

Textual Amendments

F13 Sch. 15 para. 61C renumbered (21.7.2017) by [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), art. 1, **Sch.**

General

[^{F14}61D]. The undertaker must in the exercise of any powers under this Order and in the construction, maintenance and use of the authorised development secure compliance with and

implementation of all and any applicable conditions, terms and measures contained in any relevant consent, agreement or approval given by BPC for the purpose of this Part.

Textual Amendments

F14 Sch. 15 para. 61D renumbered (21.7.2017) by [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), art. 1, [Sch.](#)

PART 6

PROTECTION FOR THE PORT AUTHORITY

[^{F15}61E]. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and the Port Authority.

Textual Amendments

F15 Sch. 15 para. 61E renumbered (21.7.2017) by [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), art. 1, [Sch.](#)

Definitions

62. In this Part—

“notice to mariners” includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen’s harbourmasters, government departments and harbour and pilotage authorities;

“navigational risk assessment” means any written assessment of any potential risk of any tidal works and includes the following information—

- (a) existing navigational features including extent of authorised channels, existing navigational structures and constraints;
- (b) tidal characteristics;
- (c) existing river uses;
- (d) general navigational arrangements;
- (e) existing site-specific issues;
- (f) existing navigational risks;
- (g) proposed navigational strategies;
- (h) delivery schedules; and
- (i) such other details as may be agreed between the undertaker and the Port Authority;

“plans and sections” includes sections, elevations, drawings, calculations, specifications, programmes, method statements, assessments of navigational risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any tidal work;

“specified day” means, in relation to any tidal work, the later of—

- (a) the day on which the detailed method statement for that work is submitted to the Port Authority under paragraph 63(1); and
- (b) the day on which the undertaker provides all such particulars of the work as have been requested by the Port Authority under paragraph 63(1);

“temporary work” means any tidal work that is not required for the operation of the authorised development;

“tidal work” means so much of the authorised development (including any temporary closure to navigation of the relevant part of the river under article 39 (temporary closure of, and works in, the River Avon) that is on, in, under or over the relevant part of the river below the level of mean high water springs and includes any projection over the river (whether or not situated within the order limits) by booms, cranes and similar plant or machinery;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a barge, a jack-up barrage, a seaplane or helicopter on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in or over water and which is at the time in, on or over water.

Tidal works: approval of detailed design

63.—(1) Not less than 60 business days before commencing a tidal work, the undertaker must submit to the Port Authority plans and sections of the tidal work, a navigational risk assessment, proposals for any lighting and laying down of buoys to secure the navigational safety of the river in the vicinity of the proposed tidal works (including any area over which public rights of navigation are proposed to be suspended), a timetable of the proposed tidal works and any proposed temporary closures of the relevant part of the river and such further particulars as the Port Authority may reasonably require.

(2) A tidal work may not be commenced except in accordance with plans and sections approved in writing by the Port Authority under this paragraph or deemed to have been approved or determined under paragraph 69.

(3) Any approval of the Port Authority required under this paragraph must not be unreasonably withheld or delayed but may be given subject to such reasonable conditions as the Port Authority may impose for the protection of—

- (a) traffic in, or the flow or regime of, the river;
- (b) the use of its operational land or the river for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

(4) Conditions imposed under sub-paragraph (3) may include conditions as to—

- (a) the proposed location of any temporary work and its dimensions;
- (b) the length of time that any temporary work may be kept in place;
- (c) the removal of any temporary work and the undertaking by the undertaker of any related work or operation that the Port Authority considers to be necessary for the purpose of removing or preventing any obstruction to navigation;
- (d) the relocation, provision and maintenance of works and moorings;
- (e) apparatus and equipment necessitated by the tidal work; and
- (f) the expiry of the approval if the undertaker does not commence construction or carrying out of the approved tidal work within a prescribed period.

(5) Subject to sub-paragraph (6), an application for approval under this paragraph is deemed to be given if it has been given or has not been refused within 25 business days of the specified day.

(6) In the event that the Port Authority requires further information pursuant to sub-paragraph (1), then the Port Authority must determine the submission submitted pursuant to that sub-paragraph as soon as reasonably practicable, but in any event no later than 45 business days from the specified day.

Tidal works and temporary closure of the river Avon: notification requirements

64.—(1) The undertaker must inform the Port Authority in writing of the intended start date and the likely duration of any tidal works at least 20 business days prior to the intended start date.

(2) The undertaker must inform the Port Authority in writing of all contractor and vessel details, including the name, type and IMO number of the vessel, the owner of the vessel or operating company and master's name and contact details, at least 20 business days prior to commencement of any tidal work.

(3) The undertaker must inform the Port Authority in writing of the timetable of any tidal works at least 20 business days prior to its proposed commencement.

(4) The undertaker must serve notice on the Port Authority no later than 20 business days prior to the proposed commencement date of any temporary closure of the relevant part of the river under article 39.

(5) Any such notice must provide the details of the proposed temporary closure of the relevant part of the river including particulars of—

- (a) commencement date;
- (b) duration; and
- (c) the affected area.

(6) Any temporary closure of the relevant part of the river must not take place except with the prior approval in writing of the Port Authority, such approval not to be unreasonably withheld or delayed, and in accordance with any reasonable conditions imposed by the Port Authority under this paragraph or determined under paragraph 69.

(7) The Port Authority may, in relation to any approval, impose reasonable conditions.

(8) Conditions imposed under sub-paragraph (7) may include conditions as to—

- (a) the limits of any area subject to temporary closure of the relevant part of the river;
- (b) the duration of any temporary closure;
- (c) the means of marking or otherwise providing warning in the river of any area affected by a temporary closure; and
- (d) the use by the undertaker of the area subject to any temporary closure so as not to interfere with any other part of the river or affect its use.

(9) For the purposes of this paragraph, the Port Authority must issue its notice to mariners within 10 business days of receipt of notice of the intended start date under sub-paragraph (1) or, if relevant, the date on which the Port Authority gives its approval under sub-paragraph (6) (whichever is the later).

(10) The undertaker must, as soon as reasonably practicable, notify the Port Authority of any changes to any of the details required to be provided under this paragraph, provided that any changes which affect, or may affect, navigation must be notified to the Port Authority immediately to enable it to issue an up-dated notice to mariners.

Communication plan

65.—(1) The undertaker and the Port Authority must agree in writing (such agreement not to be unreasonably withheld or delayed) a communication plan 20 business days prior to commencement of any tidal works.

(2) All vessels associated with any tidal works must report to Bristol VTS Centre (VHF Channel 12) advising of their activities and movements when undertaking tidal works (including temporary closure of the relevant part of the river) in accordance with the communication plan agreed with the Port Authority under sub-paragraph (1).

General provisions as to construction of works including inspection

66.—(1) A tidal work must, once commenced, be carried out by the undertaker with all reasonable dispatch and to the reasonable satisfaction of the Port Authority so that river traffic, the flow or regime of the river and the exercise of the Port Authority's functions must not suffer more interference than is reasonably practicable.

(2) The Port Authority is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

Navigational safety, lights, buoys, etc.

67.—(1) The undertaker must provide guard vessels to be positioned both upstream and downstream of the relevant part of the river during any tidal works and temporary closures of the river.

(2) The number and position of any such guard vessels must be agreed in advance in writing with the Port Authority, such agreement not to be unreasonably delayed or withheld.

(3) The undertaker must, at or near any tidal work, exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Port Authority may from time to time reasonably require.

(4) All vessels must, at all relevant times, display lights, shapes and signals in accordance with all applicable law, regulation and international conventions.

(5) The Port Authority must give the undertaker not less than 20 business days' written notice of a requirement under sub-paragraph (3) except in the case of increased risk or emergency when the Port Authority must give such notice as is reasonably practicable.

(6) The undertaker must comply with any directions of the Port Authority given from time to time with regard to the lighting of tidal works, or the screening of such lighting, so as to ensure that it is not a hazard to navigation on the river.

Obstruction in the river

68.—(1) If any pile, stump or other obstruction to navigation becomes exposed as a result of constructing any tidal work, or if any construction equipment or material is misplaced in or adjacent to the river and causes obstruction to navigation, the undertaker must, as soon as reasonably practicable after the receipt of notice in writing from the Port Authority requiring such action, remove it from the river or, in the case of any pile, stump or other obstruction to navigation, if it is not reasonably practicable to remove it—

- (a) cut the obstruction off at such level below the bed of the river as the Port Authority may reasonably direct; or
- (b) take such other steps to make the obstruction safe as the Port Authority may reasonably require.

(2) 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, the 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.

Disputes

69. Any dispute arising between the undertaker and the Port Authority under this Part must be determined by arbitration in accordance with article 49 (arbitration) unless otherwise agreed in writing by the undertaker and the Port Authority.

PART 7

PROTECTION FOR THE ENVIRONMENT AGENCY

70. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and the Agency.

71.—(1) In this Part—

“Agency” means the Environment Agency;

“Byelaws” means the byelaws set out in the Wessex Water Authority Land Drainage Byelaws 1981 that are not disapplied by Schedule 16 (amendment of local legislation);

“consented work” means a work that is required to be consented under the terms of the Water Resources Act 1991(7), the Land Drainage Act 1991(8) or the Byelaws, irrespective of any status as a statutory undertaker under those provisions;

“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, outfall or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“flood defence structure” means any valve, sluice, clyse, hatch, flashboard, flood gate, lasher, staunch gates, paddle, penstock, lock, weir, dam, pumping machinery, pump, pipe or other structure or appliance for controlling, measuring or regulating the level of water or the flow of water into, in or out of a main river or for drawing water from or delivering water into a main river.

^{F16}(2)

Textual Amendments
F16 Sch. 15 para. 71(2) omitted (21.7.2017) by virtue of [The National Grid \(Hinkley Point C Connection Project\) \(Correction\) Order 2017 \(S.I. 2017/786\)](#), art. 1, [Sch.](#)

72. The undertaker must not open or close or interfere with any flood defence structure without first obtaining the consent of the Agency in writing.

73.—(1) The undertaker must give the Agency at least 28 days’ written notice of any intention to use any bank of a main river, drainage work, river-control work or land within 8 metres of the bank or work for the purpose of depositing, stacking, storing or keeping any rubbish, goods, any materials or things whatsoever adjacent to it.

(2) The Agency must either consent (with or without conditions) or object to the notice.

(3) If within 14 days, no response is given, the Agency is deemed to have consented to the notice as submitted.

(4) The undertaker must take all reasonable care in depositing, stacking, storing or keeping any rubbish, goods, materials or things upon any drainage work not to cause damage to the drainage work and must take all reasonable care to minimise the risk of objects or matter entering or falling into a main river such as to cause an obstruction.

(5) If entry of an object or matter into a main river occurs, it must, except with consent of the Agency, be removed promptly by the undertaker.

(7) 1991 c. 57.
(8) 1991 c. 59.

74.—(1) The undertaker must give at least 28 days’ written notice to the Agency of any proposal to remove from the Order land any notice board, notice or placard put up by the Agency.

(2) The undertaker may use all reasonable endeavours to relocate any notice board, notice or placard removed under sub-paragraph (1) to a suitable alternative location and must agree with the Agency such suitable location.

75.—(1) If by reason of the storage or deposit of materials or the construction of any consented work, or of the failure of any such work, the efficiency of any flood defence structure or drainage work for flood defence purposes is impaired, or that flood defence structure or drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency; and if the undertaker fails to do so within such reasonable period as the Agency may require by notice in writing to the undertaker, the Agency may make good such impairment or damage and recover from the undertaker the expense reasonably incurred by it in so doing.

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

76. Unless otherwise agreed, any dispute or difference arising between the Agency under this Part (other than a difference as to the meaning or construction of this Part) must be settled by arbitration in accordance with article 49 (arbitration).

PART 8

PROTECTION FOR RWE GENERATION UKPLC

77. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and RWE.

78. In this Part—

“apparatus” means any of the following apparatus within the Order limits, namely wharf offloading facilities at Portbury, fuel stocking areas at Portbury, a tunnel beneath the River Avon, bulk handling terminal conveyors, fuel hoppers, refuelling points, freight connection onto the railway network, site offices and car park, belonging to or maintained by RWE for the purposes of loading, unloading, stocking and transporting of fuel (including but not limited to coal) for the purposes of fuelling Aberthaw Power Station or providing services to any other third parties; and includes any structure in which apparatus is or to be lodged or which gives or will give access to apparatus.

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

“RWE” means RWE Generation UK plc (company registration number 3892782) and any associated company of RWE Generation UK plc which holds an interest in the apparatus; 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) the holding company of RWE Generation UK plc, a subsidiary of RWE Generation UK plc or another subsidiary of the holding company of RWE Generation UK plc;

“specified works” means so much of any of the authorised development as is situated upon, across, under, or over parcels 107, 110, 187, 188, 189, 190, 191, 195, 197, 199 and 201 in Section G of the Book of Reference (being parcels in which RWE has an interest) or that are near to, or will or may in any way adversely affect the apparatus.

79. Despite any provision of this Order or anything shown on the Land Plans, the undertaker must not acquire any apparatus otherwise than by agreement.

80. 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 or under any other statutory power, and any right of RWE to use, maintain, or renew that apparatus in that land must not be extinguished.

81.—(1) Not less than 56 days before starting the execution of specified works, the undertaker must submit to RWE a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by RWE for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and RWE is entitled to watch and inspect the execution of those works, and the undertaker must supply RWE with any additional information concerning such works as RWE may reasonably require.

(3) Any requirements made by RWE under sub-paragraph (2) must be made within a period of 56 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) Where RWE requires any protective works under sub-paragraph (2) to be carried out either by itself or by the undertaker (whether of a permanent or temporary nature), the protective works must be carried out to RWE's reasonable satisfaction prior to the carrying out of the specified works.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any 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 (1) in a case of emergency, but in that case it must give to RWE notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

82. The undertaker must pay to RWE the proper and reasonable expenses reasonably incurred by RWE in, or in connection with, the inspection, alteration or protection of any apparatus.

83.—(1) Subject to sub-paragraph (3), if by reason, or in consequence, of the construction, use, existence, operation or failure of any specified works or in consequence of the construction, use, existence, operation, 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, any damage is caused to any apparatus or property of RWE, or to operations, or there is any interruption in any service provided to RWE or by RWE, or in the supply of any goods to RWE or by RWE, or RWE becomes liable to pay any amount to any third party, the undertaker must—

(a) bear and pay on demand the proper and reasonable cost reasonably and properly incurred by RWE in making good such damage or restoring operations, services or supply; and

(b) indemnify RWE for any other expenses, loss (whether direct or indirect and including losses of an economic nature), demands, proceedings, damages, claims penalty or costs incurred by or recovered from RWE, by reason or in consequence of any such damage or interruption or RWE becoming so liable to any third party.

(2) The fact that any act or thing may have been done by RWE on behalf of the undertaker or in accordance with a plan approved by RWE or in accordance with any requirement of RWE or its

supervision does not (subject to sub-paragraph (3)) excuse the undertaker from liability under sub-paragraph (1).

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

(4) RWE must give the undertaker reasonable notice (being not less than 28 days) of any claim or demand, and no settlement or compromise may be made without the consent of the undertaker (not to be unreasonably withheld or delayed) which, if it reasonably withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

PART 9

PROTECTION FOR CLH PIPELINE

84. The provisions of this Part have effect for the protection of the CLH undertaker referred to in this Part unless otherwise agreed in writing between the undertaker and the CLH undertaker.

85. In this Part—

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

“apparatus” means the pipeline, or any part of it, belonging to or maintained by the CLH undertaker, which is within the Order limits, and includes any structure in which that 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

“CLH undertaker” means CLH Pipeline Systems (CLH-PS) Limited (registered company number 09497223) or any successor in title to the CLH undertaker in respect of the apparatus.

86. Despite any provision of this Order or anything shown on the Land Plans, the undertaker must not acquire any apparatus otherwise than by agreement.

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

(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 the CLH undertaker 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 in the land referred to in sub-paragraph (2), the CLH undertaker, must on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed

(4) The CLH undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 49, and after the grant to the CLH undertaker of any such facilities and rights as are referred to in sub-paragraph (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.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the CLH undertaker that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the CLH undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the CLH undertaker.

(6) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

88.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 87(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under that sub-paragraph, the undertaker must submit to the CLH undertaker a plan, section and description of the works to be executed.

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

(3) Any requirements made by the CLH undertaker under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If the CLH undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraph 87 applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph (2) of that paragraph.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, 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 (1) in a case of emergency but in that case it must give to the CLH undertaker notice as soon as is reasonably practicable and a plan, section and description of the works referred to in sub-paragraph (1) as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

89.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the CLH undertaker the proper and reasonable expenses reasonably incurred by the CLH undertaker 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 (1), that value being calculated after removal.

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

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 49 (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 CLH undertaker by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3), the extension of the apparatus to a length greater than the length of the existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus.

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

Changes to legislation:

There are currently no known outstanding effects for the The National Grid (Hinkley Point C Connection Project) Order 2016, SCHEDULE 15.