

SCHEDULES

SCHEDULE 1

Articles 2 and 3

AUTHORISED DEVELOPMENT

In the administrative area of North Tyneside Council

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act⁽¹⁾, comprising—

Work No. 1a - the construction of one half of a new bridge to carry the westbound A1058 Coast Road over the A19 cutting.

Work No. 1b - the construction of one half of a new bridge to carry the eastbound A1058 Coast Road over the A19 cutting.

Work No. 1c - the construction of a new bridge to carry the southern section of the A19 Roundabout over the A19 cutting.

Work No. 1d - the construction of a new bridge to carry the northern section of the A19 Roundabout over the A19 cutting.

Work No. 1e - the construction of a new southbound A19 on-slip road to the south of the A19/A1058 Coast Road junction.

Work No. 1f - the construction of a new northbound A19 off-slip road to the south of the A19/A1058 Coast Road junction predominantly through utilisation of the existing A19 northbound carriageway.

Work No. 1g - the construction of a new northbound A19 on-slip road to the north of the A19/A1058 Coast Road junction.

Work No. 1h - the construction of a new southbound A19 off-slip road to the north of the A19/A1058 Coast Road junction.

Work No. 1i - the construction of 2 new shared-use bridges over the eastbound A1058 Coast Road off-slip road and on-slip road to connect the existing footways and cycle tracks to the east and west of the junction to the footway and cycle track on the A1058 Coast Road through the A19/A1058 Coast Road junction.

Work No. 1j - the construction of a new section of A19 dual carriageway under the existing A19/A1058 Coast Road junction.

Work No. 1k - the widening of Middle Engine Lane Railway Bridge to the north of the A19/A1058 Coast Road junction.

Work No. 1l - the widening of the Silverlink road on the north-east of the A19/A1058 Coast Road junction to provide an additional southbound lane on the immediate approach to the A19 roundabout.

Work No. 1m – works on the A19 to tie in the proposed works at the southern extent of the authorised development with the existing highway layout.

Work No. 1n – the construction of a revised road cross section on the A19 to include an auxiliary lane in addition to two lanes on the A19 mainline in both north and southbound directions.

(1) Section 22 was substituted by article 3 of [S.I. 2013/1883](#).

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Work No. 1o – works on the A19 to tie in the proposed works at the northern extent of the authorised development with the existing highway layout.

Work No. 1p – the construction of a new traffic signal installation incorporating Microprocessor Optimised Vehicle Activation and enhanced non-motorised user facilities at the A19 roundabout.

Work No. 1q – a combined footway and cycle track between the A19/A1058 Coast Road junction and the A19/A193 Wallsend junction adjacent to the A19 northbound carriageway.

Work No. 1r – a combined footway and cycle track adjacent to the A19 southbound on-slip road linking the bus stop on the A1058 Coast Road westbound off-slip road and the access to the Tyne Tunnel Trading Estate.

Work No. 1s – concrete repair works to the existing A1058 structures that support the A1058 Coast Road over the A19 roundabout.

Work No. 2a – the diversion of a Northern Gas Network medium pressure main through the new bridge constructed to carry the southern section of the A19 roundabout over the A19 cutting.

Work No. 2b - the construction of a new potable water main for Northumbrian Water Limited along Middle Engine Lane and Middle Engine Railway bridleway.

Work No. 2d – the diversion of British Telecommunications Public Limited Company cables through the new bridge constructed to carry the northern section of the A19 roundabout over the A19 cutting(2).

Work No. 2e – the diversion of Northern Powergrid high voltage cables through the new bridge constructed to carry the A1058 Coast Road over the A19 cutting.

Work No. 2f – the diversion of Northern Gas Network intermediate pressure mains within the verges of the A19 southbound on slip road and off slip road.

Work No. 2g – the diversion of a Northern Gas Network medium pressure main within the verge of the A19 southbound on slip road.

Work No. 2h – the diversion of Northern Powergrid low voltage cables within the Silverlink.

In connection with the construction of any of those works, further development within the Order limits consisting of—

- (a) alteration to the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (b) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (c) refurbishment works to any existing bridge,
- (d) ramps, means of access, non-motorised links, footpaths, cycle tracks and crossing facilities;
- (e) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, outfalls, ditches, wing walls, highway lighting, fencing and culverts;
- (f) street works, including breaking up or opening up a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street; works to place or maintain apparatus in a street; works to alter the position of apparatus, including mains, sewers, drains and cables;
- (g) works to alter the course of or otherwise interfere with a watercourse;

(2) The Order does not include a Work No. 2c, which is now to be carried out outside the scope of the Order.

- (h) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (i) works for the benefit or protection of land affected by the authorised development;
- (j) works required for the strengthening, improvement, maintenance or reconstruction of any streets;
- (k) works to alter or remove road furniture;
- (l) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soil stripping and storage, site levelling);
- (m) establishment of site construction compounds, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting and haulage roads; and
- (n) such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development.

SCHEDULE 2

Article 3

REQUIREMENTS

Interpretation

1. In this Schedule—

“CEMP” means construction environmental management plan;

“European protected species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010(3);

“protected species” means species which are subject to protection under the laws of England or which are European protected species; and

“suitably qualified ecologist” means an ecologist who is a full member of the Chartered Institute of Ecology and Environmental Management.

Time limits

2. The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

Construction Environmental Management Plan

3.—(1) No authorised development is to commence until a CEMP has been submitted to and approved in writing by the relevant planning authority.

(2) The CEMP must—

- (a) be substantially in accordance with the outline construction environmental management plan certified under article 38 (certification of plans, etc.);
- (b) contain a record of all the sensitive environmental features that have the potential to be affected by the construction of the proposed development;

(3) [S.I. 2010/490](#).

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- (c) incorporate the measures as detailed in the environmental report;
 - (d) include information on the control measures required to mitigate and reduce potential impacts which reflect the mitigation measures included in sections 4 to 13 of the environmental report;
 - (e) require adherence to working hours of 7:00am to 7:00pm on Mondays to Fridays and 7:00am to 1:00pm on Saturdays, except for—
 - (i) works associated with changes to the traffic management layout;
 - (ii) works associated with the construction of tie-ins at slip roads;
 - (iii) works associated with concrete repairs to the existing A1058 structures at the A19 roundabout;
 - (iv) works associated with bridge resurfacing and waterproofing of the Middle Engine Lane and Middle Engine Lane structures;
 - (v) works associated with the medium pressure gas diversion across the A19 roundabout circulatory carriageway;
 - (vi) works associated with providing drainage connections across the A19 carriageway at the A19/A193 Wallsend Junction from the north and southbound verges;
 - (vii) works associated with traffic signal duct crossings and loops;
 - (viii) any emergency works;
 - (f) require adherence to working hours of 8:00am to 6:00pm on Mondays to Fridays for any works involving impact piling; and
 - (g) include management plans, working methods and mitigation measures for each of the topics covered in the environmental report, including—
 - (i) Air Quality Management Plan;
 - (ii) Landscape Plan;
 - (iii) Cultural Heritage Management Plan;
 - (iv) Ecology Management Plan;
 - (v) Materials Management Plan;
 - (vi) Site Waste Management Plan;
 - (vii) Noise and Vibration Management Plan; and
 - (viii) Water and Drainage Management Plan.
- (3) The authorised development must be constructed in accordance with the approved CEMP.

Landscaping

4.—(1) No part of the authorised development is to commence until a written landscaping scheme for that part has been submitted to and approved in writing by the relevant planning authority.

(2) No part of the authorised development including vegetation clearance is to commence until an arboricultural walkover survey and tree survey for that part taking due regard to the guidance in *British Standard 5837:2012* have been undertaken to identify any significant constraints posed by trees.

(3) The landscaping scheme prepared under sub-paragraph (1) must be based on the preliminary landscape design contained in Appendix 6.3 to the environmental report and the results of the surveys undertaken under sub-paragraph (2).

(4) The landscaping scheme prepared under sub-paragraph (1) must include details of hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) details of existing trees to be retained, with measures for their protection during the construction period; and
- (f) implementation timetables for all landscaping works.

Implementation and maintenance of landscaping

5.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under Requirement 4.

(2) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(3) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives consent in writing to a variation.

Fencing

6. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the undertaker's Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the relevant planning authority in connection with the authorised development.

Contaminated land and groundwater

7.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development, which was not previously identified in the environmental report, the undertaker must cease construction of the authorised development in the vicinity of that contaminated land and must report it immediately in writing to the Environment Agency and relevant planning authority, and in agreement with the Environment Agency and the relevant planning authority undertake a risk assessment of the contamination which must be submitted to the relevant planning authority.

(2) Where the relevant planning authority determines that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose as well as a programme for the recommencement of construction of the authorised development in the vicinity of the contaminated land, must be prepared in consultation with the Environment Agency and submitted to the relevant planning authority for approval.

(3) No remedial measures constituting a material operation (as defined in section 155 (when development begins) of the 2008 Act) in respect of contamination of any land, including groundwater, within the Order limits are to be carried out until the scheme and programme for remedial measures has been approved in writing under sub-paragraph (2).

(4) Remedial measures must be carried out in accordance with the approved scheme and programme and construction must recommence in accordance with the programme for the recommencement of construction of the authorised development in the vicinity of the contaminated land.

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(5) Where the relevant planning authority determines in writing that remediation is not necessary, construction of the authorised development in the vicinity of the contaminated land may recommence.

Archaeology

8.—(1) No part of the authorised development is to commence until for that part a written scheme for the investigation of areas of archaeological interest, reflecting the mitigation measures included in section 5 of the environmental report, has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1).

(3) A copy of any analysis, reporting, publication or archiving required as part of the written scheme referred to in sub-paragraph (1) must be deposited with the Historic Environment Record of the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority.

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported to the relevant planning authority within a period of 14 days from the date they are identified.

(5) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (4) for a period of 14 days from the date they are identified unless otherwise agreed in writing by the relevant planning authority.

(6) If the relevant planning authority determines in writing that the archaeological remains require further investigation, no construction operations are to take place within 10 metres of the remains until provision has been made for the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the relevant planning authority.

Ecological management plan

9.—(1) No part of the authorised development is to commence until a written ecological management plan applicable to that part, reflecting the survey results and ecological mitigation measures included in section 7 of the environmental report, and including a timetable for its implementation, has been prepared in consultation with Natural England in so far as relevant to protected species or protected sites and submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved ecological management plan referred to in sub-paragraph (1).

(3) In the event that any protected species, or evidence of protected species, is found at any time when carrying out the authorised development, which was not previously identified in the environmental report, the undertaker must cease construction and contact a suitably qualified ecologist (“SQE”) to seek advice as to whether a method statement or species protection plan or both must be prepared to ensure the protection of the protected species.

(4) If the SQE advises the undertaker that a method statement or species protection plan is required under sub-paragraph (3), the undertaker must in consultation with the SQE and Natural England prepare a method statement or species protection plan together with a programme for its implementation and the recommencement of construction to be submitted to the relevant planning authority for approval in writing.

(5) The undertaker must implement the method statement or species protection plan in accordance with the programme for implementation and recommencement of construction approved under sub-paragraph (4).

(6) If the SQE advises the undertaker that a method statement or species protection plan is not required under sub-paragraph (3), the undertaker may recommence construction following receipt of written confirmation from the SQE.

Traffic Management

10.—(1) No authorised development is to commence until a traffic management plan for the construction of the authorised development has been prepared in consultation with the local highway authority and submitted to and approved in writing by the undertaker.

(2) The authorised development must be constructed in accordance with the approved management plan.

Detailed design

11. The authorised development must be carried out in accordance with the scheme design shown on the engineering drawings and sections or with any altered scheme design approved in writing by the relevant planning authority, provided that the development so altered falls within the limits of deviation and any alterations are minor or immaterial.

Surface and foul water drainage

12.—(1) No authorised development is to commence until written details of the surface and foul water drainage system, reflecting the mitigation measures in section 12 of the environmental report and including means of pollution control, have been prepared in consultation with the Environment Agency and submitted to and approved in writing by the relevant planning authority.

(2) The drainage system must be constructed in accordance with the approved details referred to in sub-paragraph (1).

Approvals and amendments to approved details

13.—(1) Where the agreement or approval of the relevant planning authority is required under any requirement in this Schedule, such agreement or approval may only be given where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the agreement or approval sought is unlikely to give rise to any materially different adverse environmental effect from those assessed in the environmental report.

(2) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed in writing by the relevant planning authority.

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SCHEDULE 3

Article 10

CLASSIFICATION OF ROADS, ETC.

PART 1

TRUNK ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road to become a Trunk Road</i>
North Tyneside	Southbound A19 on-slip road to the south of the A19/A1058 Coast Road junction between point 1/1 and point 1/2 on the rights of way and access plans, comprising 364 metres.
North Tyneside	Northbound on-slip road to the north of the A19/A1058 Coast Road junction between point 1/3 and point 1/4 on the rights of way and access plans, comprising 475 metres.
North Tyneside	Southbound off-slip road to the north of the A19/A1058 Coast Road junction between point 1/5 and point 1/6 on the rights of way and access plans, comprising 407 metres.
North Tyneside	New section of A19 dual carriageway under the existing A19/A1058 Coast Road junction between point 1/7 and point 1/8 on the rights of way and access plans, comprising 867 metres.

PART 2

ROADS SUBJECT TO 50 MILES PER HOUR LIMIT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
North Tyneside	Southbound A19 on slip road to the south of the A19/A1058 Coast Road junction between point 1/1 and point 1/2 on the traffic regulation plans, comprising 364 metres.
North Tyneside	Northbound A19 off slip road to the south of the A19/A1058 Coast Road junction between point 1/3 and point 1/4 on the traffic regulation plans, comprising 544 metres.
North Tyneside	Northbound on slip road to the north of the A19/A1058 Coast Road junction between point 1/5 and point 1/6 on the traffic regulation plans, comprising 475 metres.
North Tyneside	Southbound off slip road to the north of the A19/A1058 Coast Road junction between point 1/7 and point 1/8 on the traffic regulation plans, comprising 407 metres.
North Tyneside	A19 mainline on both north and southbound carriageways from point 1/9 to point 1/10 on the traffic regulation plans, comprising 2,120 metres.

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PART 3 CYCLE TRACKS AND FOOTWAYS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of Cycle track/Footway</i>
North Tyneside	1,186 metres combined footway and cycle track from point 1/11 to point 1/12 on the traffic regulation plans.
North Tyneside	237 metres combined footway and cycle track from point 1/13 to point 1/14 on the traffic regulation plans.
North Tyneside	418 metres combined footway and cycle track from point 1/15 to point 1/16 on the traffic regulation plans.
North Tyneside	339 metres combined footway and cycle track from point 1/17 to point 1/18 on the traffic regulation plans.
North Tyneside	113 metres combined footway and cycle track from point 1/19 to point 1/20 on the traffic regulation plans.

SCHEDULE 4

Article 12

PERMANENT STOPPING UP OF STREETS

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
North Tyneside	Closure of a layby on A19 mainline northbound carriageway as shown on the traffic regulation plans.	Location 1/21 on the traffic regulation plans.
North Tyneside	Closure of a layby on A19 mainline southbound carriageway as shown on the traffic regulation plans.	Location 1/22 on the traffic regulation plans.

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SCHEDULE 5

Article 21

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Plot reference number shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Land Plans – Sheet 2		
2/7 and 2/7a	To access Plot 2/4a that is to be temporarily acquired for use in connection with the construction of the authorised development.	All work elements
Land Plans – Sheet 3		
3/3c	To construct, operate, access and maintain a new potable water supply for Northumbrian Water Limited.	Work No 2b
3/12	To construct, access and maintain a retaining wall.	Work No 1h
3/14a	To access plots 3/12, 3/12a and 3/3q in order to inspect and maintain the retaining wall and access plot 3/14 that is to be temporarily acquired for use in connection with the construction of the authorised development.	Work No 1h and Work No 1k
Land Plans – Sheet 4		
4/3e and 4/3f	To construct, operate, access and maintain a new potable water supply station and a new foul sewer for Northumbrian Water Limited.	Work No 2b

SCHEDULE 6

Article 21

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973⁽⁴⁾ has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

(a) for “land is acquired or taken from” substitute “a right over land is purchased from”; and

⁽⁴⁾ 1973 c. 26.

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(b) for “acquired or taken from him” substitute “over which the right is exercisable”.

(3) In section 58(1)(5) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5, substitute—

“(1) In determining under section 8(1) or 34(2) of the Compulsory Purchase Act 1965, or section 166(2) of the Town and Country Planning Act 1990 whether—

(a) a right over land consisting of a house, building or manufactory can be taken without material detriment or damage to the house, building or manufactory; or

(b) a right over land consisting of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house,

the Upper Tribunal must take into account not only the effect of the acquisition of the right but also the use to be made of the right proposed to be acquired, and, in a case where the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.”.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired; or

(b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 (provisions as to divided land) of the 1965 Act substitute—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

(a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and

(b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—

(5) Section 58(1) was amended by section 16(3) of, and Schedule 5 to, the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66), section 4 of, and paragraph 29(1) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

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- (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
- (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016(6) (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11(7) (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(8) (penalty for unauthorised entry) and 13(9) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20(10) (protection for interests of tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if

(6) S.I. 2016/73.

(7) Section 11 was amended by section 34(1) of, and schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(8) Section 12 was amended by section 56(2) of, and part 1 of schedule 9 to, the Courts Act 1971 (c. 23).

(9) Section 13 was amended by section 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of schedule 23 to, The Tribunals, Courts and Enforcement Act 2007 (c. 15).

(10) Section 20 was amended by paragraph 4 of schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

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any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 (interests omitted from purchase) of the 1965 Act is modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 7

Article 27

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Plan reference number(s) shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Land Plans – Sheet 2			
In the administrative area of North Tyneside Council	2/4a	Required for the provision of a site construction compound to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and material and the treatment of site generated waste.	All Works
Land Plans – Sheet 3			
In the administrative area of North Tyneside Council	3/14	Required for access to construct the authorised development, and may also be used to store materials with a low economic value such as top soil, sub base etc., in relation to the widening of Middle Engine Railway Bridge, the diversion of a Northumbrian Water Limited potable water supply and the construction of a retaining wall.	Work No.1h Work No. 1k Work No. 2b

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SCHEDULE 8

Articles 29 and 36

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY,
WATER AND SEWERAGE UNDERTAKERS

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

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(11)), belonging to or maintained by that utility undertaker;
- (b) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (c) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(12); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(13) of that Act or an agreement to adopt made under section 104(14) of that Act,

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

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

“functions” includes powers and duties;

“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;

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

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a water undertaker within the meaning of the Water Industry Act 1991; and
- (c) a sewerage undertaker within the meaning of Part I of the Water Industry Act 1991,

(11) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by paragraphs 24, and 38(1) and (3) of schedule 6 to the Utilities Act 2000 (c. 27).

(12) 1991 c. 56.

(13) As amended by section 96(1) of the Water Act 2003 (c. 37).

(14) As amended by section 96(4) of the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29).

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

On street apparatus

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

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 12 (permanent stopping up and restriction of use of streets), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 11 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 16 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

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

Removal of apparatus

7.—(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 or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of a utility 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 utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(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, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

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(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility 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 the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 40, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

(7) Nothing in sub-paragraph (6) 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.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of

the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) are to be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility 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, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

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

(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 utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(7) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any electricity apparatus, or involve embankment works within 10 metres of any electricity apparatus, the plan to be submitted to the utility undertaker under sub-paragraph (1) must be detailed, include a method statement and describe—

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

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 40 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-

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paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must 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 must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must 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 utility undertaker in respect of works by virtue of sub-paragraph (1), 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 utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

by reason or in consequence of any such damage or interruption

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

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

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if such consent is withheld, has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

Cooperation

12. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

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

PART 2

FOR THE PROTECTION OF NORTHERN GAS NETWORKS LIMITED

Application

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

Interpretation

15. In this Part of this Schedule—

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

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by the utility undertaker for the purpose of gas supply and include 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 works, apparatus or alternative apparatus in land includes a reference to such works, apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” include the ability and right to do any of the following: construct, use, repair, alter, inspect, renew or remove;

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

“utility undertaker” means Northern Gas Networks Limited, a gas transporter within the meaning of Part 1 of the Gas Act 1986(15).

16. Except for paragraphs 17 (apparatus of utility undertaker in stopped up streets), 21 (retained apparatus: protection), 22 (expenses) and 23 (indemnity), this Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of utility undertaker in stopped up streets

17.—(1) Where any street is stopped up under article 12 (permanent stopping up and restriction of use of streets) and the utility undertaker has apparatus which is in that street or accessed via that street, the utility undertaker has the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it prior to the stopping up of any such street.

(15) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and was further amended by sections 3(2) and 76 of, and paragraphs 1 and 4 of schedule 6, and schedule 8 to, the Utilities Act 2000 (c. 27), sections 149(1) and (5) and 197(9) of, and part 1 of schedule 23 to, the Energy Act 2004 (c. 20) and S.I. 2011/2704.

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(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 11 (temporary stopping up and restriction of use of streets), the utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway, subject always to the undertaker's unimpeded ability to carry out the authorised development.

Acquisition of land

18. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any apparatus or override any easement or other interest of the utility undertaker otherwise than by agreement.

Removal or diversion of apparatus

19.—(1) If the undertaker acquires any interest in land in which the utility undertaker's apparatus is placed, that apparatus must not be removed and any right of the utility 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 utility undertaker.

(2) If, for the purpose of executing any works, the undertaker requires the removal or diversion of any apparatus, it must give to the utility undertaker 90 days' advance written notice of that requirement, together with a plan of the works and the removal or diversion works proposed, the proposed position of the alternative apparatus, and the proposed timeline for the works. The utility undertaker must reasonably approve these details. The undertaker must afford to the utility undertaker to its reasonable satisfaction the necessary facilities and rights for

- (a) the construction of alternative apparatus in other land; and
- (b) the maintenance of that apparatus,

and the utility undertaker must commence the planning for the removal or diversion works within 90 days of receiving notice under this sub-paragraph and must complete the works using its reasonable endeavours to meet the undertaker's proposed timeline, and in any event without undue delay, in accordance with the details provided by the undertaker under this sub-paragraph or as otherwise reasonably agreed by the undertaker.

(3) If, in consequence of the works carried out by the undertaker, the utility undertaker reasonably needs to remove or divert any of its apparatus, it must without undue delay give the undertaker written notice of that requirement, together with a plan of the work proposed, the proposed position of the alternative apparatus and the proposed timeline for the works. The undertaker must reasonably approve these details and must afford to the utility undertaker to its reasonable satisfaction the necessary facilities and rights for—

- (a) the construction of alternative apparatus; and
- (b) the maintenance of that apparatus,

and the utility undertaker must commence the planning for the removal or diversion works within 90 days of the details of its proposed works being approved by the undertaker under this sub-paragraph, and must complete the works without undue delay and in accordance with the approved details.

(4) If the utility undertaker fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal or diversion works under sub-paragraph (2) within 70 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved, provided that the undertaker has first taken all reasonable steps to contact the relevant representatives of the utility undertaker in order to elicit such a response.

(5) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraphs (2) and (3), the utility undertaker must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, but this obligation does not require the utility undertaker to use its compulsory purchase powers unless it elects to so do.

(6) Paragraphs 22 (expenses) and 23 (indemnity) of this Part of this Schedule apply to removal or diversion works under this paragraph, but the utility undertaker must provide to the undertaker for its approval a cost estimate for works that the utility undertaker proposes to carry out, and the undertaker is not liable for any costs under this paragraph that are not in accordance with an estimate that it has approved.

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus are less favourable on the whole to the utility undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, then the undertaker and the utility undertaker must agree appropriate compensation.

(3) If the amount of compensation cannot be agreed, then either the undertaker or the utility undertaker may refer the matter to arbitration, and the arbitrator must make such provision for the payment of compensation by the undertaker to the utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

21.—(1) Not less than 56 days before commencing the execution of any works that will or may affect any apparatus, the removal or diversion of which has not been required by the undertaker under paragraph 19(2) or otherwise, the undertaker must submit to the utility undertaker in question a plan showing the works and the apparatus.

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

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

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(3) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (1) or (2) applies until the utility undertaker has given written approval of the plan submitted under sub-paragraph (1).

(4) Any approval of the utility undertaker required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld or delayed; and
- (c) is deemed to be granted after the expiry of 70 days from receipt by the utility undertaker of the plan if no material response to the request for approval has been provided within the initial 56 day period, provided that the undertaker must have first taken all reasonable steps to contact the relevant representatives of the utility undertaker in order to elicit such a response. In any event no work is to proceed without the utility undertaker's consent (not to be unreasonably withheld or delayed).

(5) In relation to a work to which sub-paragraph (2) applies, the utility undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under the Order to which this paragraph applies must be executed only in accordance with the relevant plan, notified under sub-paragraph (1) or approved (with conditions, if applicable) under sub-paragraph (4), as amended from time to time by agreement between the undertaker and the utility undertaker. The utility undertaker is entitled to watch and inspect the execution of those works.

(7) Where the utility undertaker requires any protective works (whether of a temporary or permanent nature) or subsidence monitoring to be carried out either by itself or by the undertaker, the utility undertaker must give the undertaker notice of such requirement in its approval under sub-paragraph (3), and—

- (a) such protective works must be carried out to the utility undertaker's reasonable satisfaction prior to the carrying out of the relevant part of the works;
- (b) ground subsidence monitoring must be carried out in accordance with a scheme approved by the utility undertaker (such approval not to be unreasonably withheld or delayed), which must set out—
 - (i) the apparatus which is to be subject to such monitoring;
 - (ii) the extent of land to be monitored;
 - (iii) the manner in which ground levels are to be monitored;
 - (iv) the timescales of any monitoring activities; and
 - (v) the extent of ground subsidence which, if exceeded, is to require the undertaker to submit for the utility undertaker's approval a ground subsidence mitigation scheme in respect of such subsidence;
- (c) if a subsidence mitigation scheme is required, it must be carried out as approved (such approval not to be unreasonably withheld or delayed).

(8) 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 the relevant works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(9) The undertaker is not required to comply with sub-paragraph (1) or (2) where it needs to carry out emergency works as defined in the 1991 Act, but in that case it must give to the utility undertaker notice as soon as is reasonably practicable and a plan of those works to comply with

the other requirements in this paragraph in so far as is reasonably practicable in the circumstances, provided that the undertaker always complies with sub-paragraph (10).

(10) At all times when carrying out any works authorised under this Order, the undertaker must comply with the utility undertaker's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of Northern Gas Networks, Gas pipelines and associated installation requirements for third parties NGN/SPSSW22" and Health and Safety Executive guidance document "HS(G)47 Avoiding Danger from underground services".

Expenses

22.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the utility undertaker on demand all charges, costs and expenses reasonably incurred by the utility undertaker in, or in connection with, the inspection, removal or diversion, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be reasonably required and necessary in consequence of the execution of the works, including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus, including without limitation in the event that the utility undertaker elects to use compulsory acquisition powers to acquire any necessary rights under paragraph 19(7), all costs reasonably incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any works referred to in this Part of this Schedule; and
- (g) any statutory loss of supply payments under the 'Guaranteed Standards of Service' regime that the utility undertaker may incur in consequence of the works, but in the event that such payments are likely to become payable, the utility undertaker must give the undertaker notice as soon as reasonably practicable of the payments and their likely amount.

(2) The utility undertaker must use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any expenses capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, the utility undertaker is to provide an explanation of how the claimed expenses have been minimised. The undertaker is only liable to pay expenses that have been reasonably incurred.

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

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

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

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then, if this incurs greater expense than would have been incurred by a like-for-like (or as close as practicable to like-for-like) replacement at the same depth, the undertaker is not liable for this additional expense.

(5) For the purposes of sub-paragraph (4) 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.

Indemnity

23.—(1) Subject to sub-paragraphs (2), (3) and (4), if by reason or in consequence of the construction of any works carried out under this Part of this Schedule or in consequence of the construction, use, maintenance of the works by or on behalf of the undertaker or failure of any of the works in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, there is subsidence resulting from any of the works, or any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the utility undertaker, or the utility undertaker becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by the utility undertaker in making good such damage or restoring the supply; and
- (b) indemnify the utility undertaker for any other expenses, loss (other than consequential losses), demands, proceedings, damages, claims, penalties or costs (except to the extent that those liabilities are due to the sole, partial or complete act, neglect or default of the utility undertaker) incurred by or recovered from the utility undertaker.

(2) The fact that any act or thing may have been done by the utility undertaker on behalf of the undertaker or in accordance with a plan approved by the utility undertaker or in accordance with any requirement of the utility undertaker or under its supervision does not (subject to sub-paragraph (4)), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) The utility undertaker must use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any costs, expenses, losses, demands, penalties etc. capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, the utility undertaker must provide an explanation of how the claimed expenses have been minimised. The undertaker is only liable to pay expenses that have been reasonably incurred.

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

(5) The utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without first consulting the undertaker and considering its promptly made representations to the extent practicable.

Enactments and agreements

24. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and the utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker.

Co-operation

25. Where in consequence of the proposed construction of any of the authorised development the undertaker or the utility undertaker requires the removal of apparatus in accordance with the

provisions of this Part of this Schedule, the undertaker must use its best endeavours to co-ordinate the execution of the works to or for the benefit of the apparatus in the interests of safety and the efficient and economic execution of such works, taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking, and the utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

Access

26. If in consequence of an agreement reached in accordance with paragraph 18 or the powers granted under this Order, the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable the utility undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

27. Any difference or dispute arising between the undertaker and the utility undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and that utility undertaker, be determined by arbitration in accordance with article 40 (arbitration).

Works falling outside of development authorised by the Order

28. Nothing in this schedule requires the undertaker to carry out works, or requires the undertaker to enable the utility undertaker to carry out works, that are not authorised by this Order. The utility undertaker must not request any alteration, diversion, protective work or any other work which is not authorised to be carried out under this Order (but for the avoidance of doubt, it may elect to carry out such works itself under any other planning permission available to it).

PART 3

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

29. For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker and the operator, have effect.

30. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003⁽¹⁶⁾;

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system is to be construed in accordance with paragraph 1(3A)⁽¹⁷⁾ of that code;

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽¹⁸⁾;

“electronic communications code network” means—

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

⁽¹⁶⁾ 2003 c. 21.

⁽¹⁷⁾ Paragraph 1(3A) was inserted by section 106(2) of, and paragraph 1 and 4 of schedule 3 to, the Communications Act 2003.

⁽¹⁸⁾ See section 106 of the 2003 Act.

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

- (b) an electronic communications network which the undertaker is providing or proposing to provide;

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

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

31. The exercise of the powers conferred by article 29 (statutory undertakers) is subject to paragraph 23 of Schedule 2 (undertaker’s works) to the Telecommunication Act 1984⁽¹⁹⁾.

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

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development, or other property of an operator); or

- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the 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.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 40 (arbitration).

(5) This Part of this Schedule does not apply to—

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

(6) Nothing in this Part of this Schedule 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.

⁽¹⁹⁾ 1984 c. 12, Paragraph 23 was amended by section 190 of, and paragraph 68 of schedule 25 and part 1 of schedule 27 to, the Water Act 1989 (c. 15), section 112(4) of, and schedule 18 to, the Electricity Act 1989 (c. 29) and section 106(2) of, and paragraphs 1, 5(d) and 8 of schedule 3 to, the Communications Act 2003.