

SCHEDULE 10

Article 42

Protective provisions

PART 1

For the protection of electricity, gas, water and sewerage undertakers

Application

1. For the protection of the statutory undertakers referred to in this Part of this Schedule (save for Anglian Water and Centrica which are protected by Parts 4 and 5 of this Schedule) the following provisions, unless otherwise agreed in writing at any time between the undertaker and the statutory undertaker concerned, have effect.

Interpretation

2. In this Part of this Schedule—

“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 an electricity statutory undertaker, electric lines or electrical plant (as defined in the 1989 Act, belonging to or maintained by that electricity statutory undertaker for the purposes of electricity supply;
- (b) in the case of a gas statutory undertaker, any mains, pipes or other apparatus belonging to or maintained by that gas transporter for the purposes of gas supply;
- (c) in the case of a water statutory undertaker, mains, pipes or other apparatus belonging to or maintained by that water statutory undertaker for the purposes of water supply; and
- (d) in the case of a sewerage statutory undertaker—
 - (i) any drain or works vested in the statutory undertaker under the Water Industry Act 1991 and Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011⁽¹⁾; 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 in each case 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;

“pipeline” means the whole or any part of a pipeline belonging to or maintained by an statutory undertaker and includes any ancillary works and apparatus;

(1) S.I. 2011/1566.

Status: This is the original version (as it was originally made).

“plan” includes a section and description of the works to be executed;

“statutory undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the 1989 Act;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986(2);
- (g) a water statutory undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage statutory undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised project, and in relation to any apparatus, means the statutory 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 statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of apparatus

4. 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

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 of this Schedule 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 the statutory undertaker in question written notice of that requirement, together with a plan 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 46 (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 the provisions of this Part of this Schedule.

(5) Regardless of 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.

(2) 1986 c.44.

Retained apparatus: protection

6.—(1) Not less than 28 days before starting the execution of any works of the type referred to in sub-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 sub-paragraph 5(2), the statutory undertaker must submit to the undertaker in question a plan of the works to be executed.

(2) Those works are to 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 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 an statutory undertaker under sub-paragraph (2) must 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 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 5(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 statutory 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 (2) in so far as is reasonably practicable in the circumstances.

Cathodic protection testing

7. Where in the reasonable opinion of the statutory undertaker—

- (a) the authorised project might interfere with the existing cathodic protection forming part of a pipeline; or
- (b) a pipeline might interfere with the proposed or existing cathodic protection forming part of the authorised project,

the statutory undertaker to whom the pipeline belongs, or who maintains that pipeline, and the undertaker must co-operate in undertaking the tests which the statutory undertaker considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a statutory undertaker the reasonable expenses reasonably incurred by that statutory undertaker in, or in connection with—

- (a) the inspection, removal, alteration or protection of any apparatus; or
- (b) the construction of any new apparatus, which may be required in consequence of the execution of any such works as are required under this Part of this Schedule.

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

Status: This is the original version (as it was originally made).

(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 46 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the 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 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 an 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 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.

Co-operation

9. Where in consequence of the proposed construction of any of the authorised project, the undertaker requires the removal of apparatus under sub-paragraph 5(2)) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 6(2), the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised project; and each statutory undertaker must use its reasonable endeavours to co-operate with the undertaker for that purpose.

Arbitration

10. Any difference or dispute arising between the undertaker and a statutory undertaker under this Schedule is, unless otherwise agreed in writing between the undertaker and that statutory undertaker, to be determined by arbitration in accordance with article 46 (arbitration).

PART 2

For the protection of operators of Electronic Communication Code Networks

Effect

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

Interpretation

2. In this Part of this Schedule—

“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) 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⁽³⁾;

“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
- (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; and

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

On-street apparatus

3. The exercise of the powers of article 33 (statutory undertakers) are subject to paragraph 23 of Schedule 2 to the Telecommunication Act 1984⁽⁴⁾ as if the undertaker were a “relevant undertaker” for the purposes of that paragraph.

Enactments and agreements in respect of apparatus in the undertaker’s land

4. 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.

Arbitration

5. Any difference or dispute arising between the undertaker and an operator under this Part of this Schedule is, unless otherwise agreed in writing between the undertaker and that operator, to be referred to and settled by arbitration under article 46 (arbitration).

PART 3

For the protection of the Environment Agency

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

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

⁽³⁾ See section 106.

⁽⁴⁾ 1984 c.12.

Status: This is the original version (as it was originally made).

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

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

“a main river” and “ordinary watercourse” have the meanings given by respectively the Water Resources Act 1991 and the Land Drainage Act 1991;

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

“realignment scheme” means the future realignment of the flood defences at Goxhill by the Agency;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or 8 metres of a main river, or is otherwise likely to:

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or groundwater; or
- (c) affect the conservation, distribution or use of water resources

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

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 25.

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

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval, or submission of further particulars if required by the Agency under sub-paragraph (1), and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or water resources for the prevention of pollution or in the discharge of its environmental duties.

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

3. Without limiting the scope of paragraph 17, the requirements which the Agency may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

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

by reason of any specified work.

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

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and an officer of the Agency is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than seven days after the date on which it is brought into use.

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

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

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

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

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

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

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

Status: This is the original version (as it was originally made).

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

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

6. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

7.—(1) The undertaker must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

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

(2) Without prejudice to the other provisions of this Part, the undertaker must indemnify the Agency from all claims, proceedings, costs, damages, expenses or loss which may be made or taken against, recovered from, or incurred by, the Agency by reason of the construction of any of the specified works or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

(3) The undertaker shall not be liable under paragraph (2) to the limited extent that the liability is a result of negligence on the part of the Agency or its duly authorised representative, employee, contractor or agent.

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

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

9.—(1) The undertaker will not in the exercise of any powers conferred by this Order interfere with the Agency's access to or maintenance of any drainage work unless a suitable alternative access is provided prior to and for the duration of any such interference.

(2) The undertaker must not exercise the power conferred by articles 15 (access to works), 27 (temporary use of land for carrying out the authorised project) and 28 (temporary use of land for maintaining the authorised project) so as to interfere with any drainage work unless the exercise of such powers is with the consent of the Agency and in accordance with paragraphs 17 to 24 of this Part.

10. Any dispute arising between the undertaker and the Agency under this Part of this Schedule, is to be determined by arbitration under article 46 (arbitration).

11.—(1) Any specified work capable of interfering with or risking damage to any drainage work for flood defence must not commence until a scheme for monitoring ground subsidence (referred to

in this paragraph as “the monitoring scheme”) has been submitted to and approved by the Agency, such approval not to be unreasonably withheld or delayed.

(2) The monitoring scheme described in sub-paragraph (1) must set out—

- (a) the drainage work which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, will require the undertaker to submit for the Agency’s approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (5).

(3) The Agency must give notice of its decision as to whether or not it approves the monitoring scheme within 21 days beginning with—

- (a) where no further information is requested under sub-paragraph (4), the day immediately following that on which the application is received by the discharging authority; and
- (b) where further information is requested under sub-paragraph (4), the day immediately following that on which further information has been supplied by the undertaker.

(4) Where an application has been made under sub-paragraph (1) the Agency may request such reasonable further information from the undertaker as it considers necessary to enable it to consider the application.

(5) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a “mitigation scheme”) must be submitted to the Agency for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the Agency.

12. Within the Order limits on the south bank of the estuary, from the crest of the flood defences to a point 750 metres landward (measured perpendicular to the flood defences) of the crest of the said defences, the pipeline shall be laid with a minimum cover of 1.7 metres above the pipeline.

PART 4

For the protection of Anglian Water

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

(2) In this Part of this Schedule—

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

- (a) any drain or works vested in Anglian Water under The Water Industry Act 1991; and
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102 (4) of The Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

Status: This is the original version (as it was originally made).

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

“functions” includes powers and duties;

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

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

(3) The undertaker shall not interfere with, build over or near to any apparatus within the Order land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus; 2.25metres where the diameter of the pipe is less than 150 millimetres, 3 metres where the diameter of the pipe is between 150 and 450 millimetres, 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres and 6 metres where the diameter of the pipe exceeds 750 millimetres unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

(4) The alteration, extension, removal or re-location of any apparatus shall not be implemented until—

(a) any requirement for any permits under the Environmental Permitting Regulations 2010 or other legislations and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and

(b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

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

(6) Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker shall, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 46 (arbitration).

(7) If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

(8) If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the company, notification of the location

of such assets will immediately be given to Anglian Water and afforded the same protection of other Anglian Water assets.

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

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

PART 5

For the protection of Centrica

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

Interpretation

2. In this Part of this Schedule—

“apparatus” means Centrica’s pipelines, cables, structures or other electrical, gas or telecommunication infrastructure owned, occupied or maintained by Centrica for the purposes of its undertaking including the pipeline;

“Centrica” means Centrica Plc and all of its subsidiaries and group companies, including but not limited to Centrica Storage Limited, or any successor company performing the same functions; and

“pipeline” means the Centrica condensate pipeline 200NB.

Creation of rights and access for Centrica

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

(2) The undertaker will not in the exercise of any powers conferred by this Order unreasonably interfere with Centrica’s access to inspect, renew, maintain or decommission the pipeline unless a suitable alternative access is provided at the undertaker’s expense prior to and for the duration of any such interference.

Apparatus

4.—(1) Save where paragraph 36 of this Part applies, no works are to commence within 10 metres of apparatus until a construction method statement to protect the apparatus has been prepared by the undertaker and submitted to and agreed with Centrica (such agreement not to be unreasonably withheld or delayed).

Status: This is the original version (as it was originally made).

- (2) The construction method statement must include provisions in respect of—
- (a) the location and methods of reinforcement of crossing points over the apparatus and restrictions on building and altering the ground level over the apparatus elsewhere.
 - (b) a mechanism for the enforcement of the relevant undertaker’s use of designated crossing points over the apparatus and the agreed reinforcement methods; and
 - (c) adoption of a prior notification and consent regime which would require the relevant undertaker to—
 - (i) obtain Centrica’s consent to the carrying out of the proposed development within the vicinity of the apparatus, such consent not to be unreasonably withheld; and
 - (ii) notify Centrica of its intention to carry out any development within the vicinity of the apparatus, such notification to be provided at least 7 days prior to any such development occurring; and
- the authorised project must be carried out in accordance with the approved construction method statement.

(3) At all times when carrying out any works authorised under the Order the undertaker must comply with the undertaker’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid high pressure gas pipelines and associated installation requirements for third parties T/SP/SSW22”.

(4) Prior to any works authorised under the Order within 50 yards of the pipeline being carried out, a crossing agreement shall be entered into between the undertaker and Centrica governing the works to be undertaken, and any future works undertaken in the Notification Area (as defined in the crossing agreement) by the undertaker, in a form acceptable to and to be approved by Centrica.

Ground Subsidence Monitoring Scheme

5.—(1) Any authorised works within 100 metres of any apparatus or alternative apparatus capable of interfering with or risking damage to the apparatus or alternative apparatus must not commence until a scheme for monitoring ground subsidence (“referred to in this paragraph as the monitoring scheme”) has been submitted to and approved by Centrica, such approval not to be unreasonably withheld or delayed.

- (2) The monitoring scheme described in sub-paragraph (1) must set out—
- (a) the apparatus which is to be subject to such monitoring;
 - (b) the extent of land to be monitored;
 - (c) the manner in which ground levels are to be monitored;
 - (d) the timescales of any monitoring activities; and
 - (e) the extent of ground subsidence which, if exceeded, will require the undertaker to submit for Centrica’s approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

(3) The monitoring scheme required by sub paragraphs (1) and (2) must be submitted at least 28 days prior to the commencement of any works authorised by this Order or comprised within the authorised project to which sub-paragraph (1) applies. Any requirements of Centrica will be notified within 10 days of receipt of the monitoring scheme. Thereafter the monitoring scheme must be implemented at the cost of the undertaker as approved, unless otherwise agreed in writing with Centrica.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a “mitigation scheme”) must be submitted to Centrica for approval, such approval

not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented at the cost of the undertaker as approved, unless otherwise agreed in writing with Centrica save that Centrica retains the right to carry out any further necessary protective works for the safeguarding of their apparatus.

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

Cathodic Protection Testing

6.—(1) Where in the reasonable opinion of Centrica—

- (a) the authorised project might interfere with the existing cathodic protection forming part of a pipeline; or
- (b) a pipeline might interfere with the proposed or existing cathodic protection forming part of the authorised project,

Centrica and the undertaker must co-operate in undertaking the tests which Centrica considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection. Such tests shall be at the cost of the undertaker.

(2) The undertaker shall at its cost implement any measures identified for providing or preserving cathodic protection as soon as reasonably practicable.

7.—(1) In the event that the undertaker uses an alternative cathodic protection design for the authorised works to that shown on the works plans, not less than 56 days before the commencement of any authorised works, the undertaker shall submit to Centrica plans detailing alterations to the cathodic protection design and setting out a pre- and post- construction monitoring scheme to assess any interactions with apparatus or alternative apparatus.

(2) The undertaker must not commence any works to which sub-paragraph (1) applies until Centrica has given written approval of the plans and monitoring scheme submitted.

(3) Any approval of Centrica required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for the protection of apparatus; and
- (b) must not be unreasonably withheld.

(4) The undertaker must implement the works and the monitoring scheme as approved under sub-paragraph (1) in the construction and maintenance of the authorised works.

Removal of apparatus

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

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker required the removal of apparatus in that land, it shall give Centrica 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any powers conferred by this

Status: This is the original version (as it was originally made).

Order Centrica reasonably needs to remove any apparatus) the relevant undertaker shall, subject to sub-paragraph (3), afford to Centrica to their satisfaction, (taking into account paragraph 37(1) below) the necessary facilities and rights for—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker or Centrica, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Centrica shall, on receipt of written notice to that effect from the undertaker and at the undertakers cost, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Centrica to seek compulsory purchase powers to this end unless it elects to do so.

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

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

Facilities and rights for alternative apparatus

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

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

Costs

10. If for any reason or in consequence of the construction, operation or maintenance of the authorised project, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Centrica, the undertaker must bear and pay the cost reasonably incurred by Centrica in making good any damage by reason or in consequence of such damage.

Requirement for agreement

11. 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 Centrica or acquire any land or other interest of Centrica or create any new rights over the same otherwise than by agreement of Centrica, which agreement must not be unreasonably withheld.

Disputes

12. Any dispute arising between the undertaker and Centrica under this Part of this Schedule must be determined by arbitration as provided in article 46 (arbitration) unless otherwise agreed in writing between the undertaker and Centrica.