

## SCHEDULES

### SCHEDULE 9

Articles 34 and 44

#### PROTECTIVE PROVISIONS

#### PART 1

#### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS

##### *Application*

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.

##### *Interpretation*

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 a licence holder within the meaning of Part 1 of the Electricity Act 1989, electric lines or electrical plant (as defined in the Electricity Act 1989(1)), belonging to or maintained by that undertaker;
- (b) in the case of a gas transporter within the meaning of Part 1 of the Gas Act 1986, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(2) for the purposes of gas supply;
- (c) in the case of a water undertaker within the meaning of the Water Industry Act 1991, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991—
  - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(3); 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,

---

(1) 1989 c. 29.

(2) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(3) 1991 c. 56.

*Status: This is the original version (as it was originally made).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

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

“functions” includes powers and duties;

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

“plan” includes 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;

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
  - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
  - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the 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. Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 13 (temporary closure, alteration, diversion or restriction of streets and public rights of way), 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 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

#### *Acquisition of apparatus*

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 (6).

(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 and section 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 an 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.

(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 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 48 (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 48, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (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.

#### *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 48 (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.

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

### *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) 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 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 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.

### *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 subparagraph (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 48 (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 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 is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a 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), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a 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 undertaker,
- (c) 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 who, if withholding such consent, has the sole conduct of any settlement or compromise or 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 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.

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

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 OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

#### *Application*

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

#### *Interpretation*

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(4);

“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(5);

“electronic communications code network” means—

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

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

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

#### *Electronic communications apparatus installed on, under or over any land*

16. The exercise of the powers conferred by article 34 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

---

(4) 2003 c. 21.

(5) See section 106. Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

### Compensation

**17.—**(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 any of those works—

- (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 those works), 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 who, if withholding 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 48 (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 (street works in England and Wales) 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.

## PART 3

### FOR THE PROTECTION OF RAILWAY INTERESTS

**18.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Network Rail and in the case of paragraph 32 any other person on whom rights or obligations are conferred by that paragraph.

**19.** In this Part—

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

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

“network licence” means the network licence, as amended from time to time, granted to Network Rail by the Secretary of State in exercise of the powers in section 8 of the Railways Act 1993(6);

---

(6) 1993 C. 43 .

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

“Network Rail” means Network Rail Infrastructure Limited (registered company number 2904587) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes; and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(7)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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

“railway property” means—

- (a) any railway belonging to Network Rail;
- (b) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (c) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment;

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

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

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

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

**21.**—(1) The undertaker must not exercise the powers conferred by—

- (a) article 4 (maintenance of the authorised development);
- (b) article 5 (maintenance of the drainage works);
- (c) article 15 (access to works);
- (d) article 18 (discharge of water);
- (e) article 19 (protective work to buildings);
- (f) article 20 (authority to survey and investigate the land);
- (g) article 21 (compulsory acquisition of land);
- (h) article 23 (compulsory acquisition of rights and restrictive covenants);

---

(7) 2006 c. 40.



- (i) article 25 (private rights over land);
- (j) article 28 (acquisition of subsoil or airspace only);
- (k) article 29 (rights under or over streets);
- (l) article 30 (temporary use of land for carrying out the authorised development);
- (m) article 31 (temporary use of land for maintaining the authorised development);
- (n) article 34 (statutory undertakers);
- (o) article 42 (felling or lopping);
- (p) article 43 (trees subject to tree preservation orders),

or the powers conferred by section 11(3) of the 1965 Act, in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or article 34 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions and, if applicable, must be subject to first obtaining the consent and/or surrender of any leaseholder of the railway property.

**22.—**(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled in accordance with paragraph 39 of this Part.

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

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans, the engineer may specify any protective works (whether temporary or permanent) which in the opinion of the engineer must be carried out before

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

the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using them (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case with all reasonable dispatch, and the undertaker must not commence the construction of the specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

**23.**—(1) Any specified work and any protective works to be constructed by virtue of paragraph 22(3) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 22;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

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

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

**24.** The undertaker must—

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

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

**26.**—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 12 months after the completion of that work, in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail; and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the

costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail, then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work, and the undertaker must, notwithstanding any such approval of a specified work under paragraph 22(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 27(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

**27.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any protective works under paragraph 22(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, guards and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, need to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**28.—(1)** In this paragraph—

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

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

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 22(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

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

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

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

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 22(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to paragraph (a).

(5) In any case where it is established that EMI can reasonably be prevented only by modifications to Network Rail's apparatus, Network Rail must not withhold or delay its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 22(1) has effect subject to this sub-paragraph.

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

(7) In the event of EMI having occurred—

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

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

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 23.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 32(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 27(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that sub-paragraph.

(11) In relation to any dispute arising under this paragraph, the reference in article 48 (arbitration) to the Secretary of State must be read as a reference to the President of the Institution of Engineering and Technology.

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

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

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

**32.—(1)** The undertaker must pay to Network Rail all reasonable and proper costs, charges, damages and expenses not otherwise provided for in this Part (but subject to the provisions of this paragraph and article 47 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail by reason of—

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

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the supervision of the engineer will not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under this sub-paragraph.

(2) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands;
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take all reasonable steps to mitigate any liabilities relating to such claims or demands.

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

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

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

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

(6) In this paragraph—

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

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

**33.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part (including the amount of the relevant costs mentioned in paragraph 32) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part (including any claim relating to those relevant costs).

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

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

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

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

**37.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent under article 8 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**38.** The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 45 (certification of documents, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form to be agreed between the parties.

**39.** In relation to any dispute arising under this Part of this Schedule (except for those disputes referred to in paragraph 28(11) of this Part), unless otherwise provide for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed

on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

## PART 4

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

**40.** The following provisions of this Part of this Schedule apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

**41.** In this part of this Schedule—

“the Agency” means the Environment Agency;

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

“Cove Brook Flood Storage Area” means trenchless crossing TC014a as shown on sheet 34 of the General Arrangement Plans;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

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

“main river” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the channel;

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

“specified work” means the conduct of any construction or maintenance activity authorised by this Order as is in, on, under, over or within 8 metres of a main river or the Cove Brook Flood Storage Area and 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 ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery;
- (d) affect the conservation, distribution or use of water resources; or
- (e) affect the conservation value of the main river and habitats in its immediate vicinity;

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, river basins, sewers and passages through which water flows except a public sewer.

**42.—(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 receipt of the plans reasonably request.

(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 51.

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

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

- (a) must not be unreasonably withheld or delayed and the Agency will provide regular updates on its consideration of the requested approval and including timely notice of any potential refusal or delay to its determination;
  - (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval in which case the Agency must provide a statement of the grounds of refusal or delay as soon as possible after such deemed refusal; and
  - (c) may be given subject to such reasonable requirements as the Agency may have (taking account of the terms of this Order) and which are for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.
- (4) The Agency 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).

**43.** Without limiting paragraph 42 and subject to paragraph 44, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary (taking account of the terms of this Order)—

- (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.

**44.—(1)** Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 43, must be constructed—

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

and the Agency will be entitled by its officer 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 7 days after the date on which it is completed.

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

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule or, as the case may be, the standard rules, 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, being not less than 28 days beginning with the date when a notice under sub-paragraph (4) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure reasonably incurred by the Agency in so doing will be recoverable from the undertaker.



(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 51.

**45.—**(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works ensure that any drainage work which is situated within the limits of deviation and on land held or occupied 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, is maintained in good repair and condition and free from obstruction, for the duration of the conduct of the specified works.

(2) If any such drainage work which the undertaker is liable to maintain, by virtue of sub-paragraph (1) above, is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5) and paragraph 49, if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the 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 any expenditure incurred by the Agency in so doing will be recoverable from the Applicant.

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

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 51.

(6) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

**46.** Subject to paragraph 49, 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 Applicant 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 any expenditure reasonably incurred by the Agency in so doing from the undertaker.

**47.** If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the Applicant must provide such alternative means of access (having regard to the terms of this Order and the nature

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

of the undertaker's interest in land) that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of the Applicant becoming aware of such obstruction.

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

(2) If by reason of—

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

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the Applicant requiring it to take such steps as may be reasonably practicable (taking account of the terms of this Order) to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Applicant fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure reasonably incurred by the Agency in so doing will be recoverable from the Applicant.

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

**49.** The undertaker must repay to the Agency all reasonable costs, charges and expenses which the Agency may reasonably incur—

- (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) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

**50.**—(1) The undertaker must make reasonable compensation for costs and losses which may be reasonably incurred or suffered by the Agency by reason of—

- (a) the construction of any specified works comprised within the works authorised by this Order; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction of the specified works.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—

- (a) expenses and charges;
- (b) staff costs and overheads;
- (c) legal costs;

“losses” includes physical damage.

(3) The undertaker must make reasonable compensation for liabilities, claims and demands arising out of or in connection with the specified works comprised within the works authorised by this Order or otherwise out of the matters referred to in sub-paragraph (1)(a) and (b).

(4) For the avoidance of doubt, in sub-paragraph (3)—

“claims” and “demands” include as applicable—

- (a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;
- (b) any interest element of sums claimed or demanded;

“liabilities” includes—

- (a) contractual liabilities;
- (b) tortious liabilities (including liabilities for negligence or nuisance);
- (c) liabilities to pay statutory compensation or for breach of statutory duty; and
- (d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable notice of any such claim or demand.

(6) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(7) The Agency must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(8) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(9) The Agency must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonably expenses reasonably incurred in so doing.

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

**51.** Any dispute arising between the undertaker and the Agency under this part of this Schedule must, if the parties agree, be determined by arbitration under article 48 (arbitration).

## PART 5

### FOR THE PROTECTION OF THE DRAINAGE AUTHORITY

**52.** The following provisions of this Part of this Schedule apply for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

**53.** In this part of this Schedule—

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

“drainage authority” means the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991<sup>(8)</sup>;

---

(8) 1991 c.59.

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

“drainage work” means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring which is the responsibility of the drainage authority subject to such changes as notified to the undertaker;

“ordinary watercourse” has the meaning given by section 72 of the Land Drainage Act 1991;

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

“specified work” means the conduct of any construction or maintenance activity authorised by this Order as is in, on, under, over or within 8 metres of a drainage work and is otherwise likely to affect the flow, purity or quality of water in any watercourse or other surface waters or ground water.

**54.**—(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the submission of the plans reasonably request.

(2) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 61.

(3) Any approval of the drainage authority 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 (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work.

(4) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

**55.** Without limiting paragraph 54, the requirements which the drainage authority 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 work (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 (taking account of the terms of this Order)—

(a) to safeguard any drainage work against damage by reason of any specified work; or

(b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased, by reason of any specified work.

**56.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 55, must be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and

(b) to the reasonable satisfaction of the drainage authority,

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

(2) The undertaker must give to the drainage authority not less than 14 days’ notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date of completion.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

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

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker 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 drainage authority 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 drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 61.

**57.—**(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of the specified work 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 work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

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

(3) Subject to sub-paragraph (4) if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 61.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

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

**58.** If by reason of the construction of a 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, the impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

**59.** The undertaker must repay to the drainage authority all reasonable costs, charges and expenses which the drainage authority may reasonably incur—

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

**60.—(1)** The undertaker must make reasonable compensation for liabilities, costs and losses which may be reasonably incurred or suffered by the drainage authority by reason of—

- (a) the construction of any specified works comprised within the works authorised by this Order; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction of the authorised works.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand.

(3) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(4) The drainage authority must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(5) The drainage authority will, having regard to its statutory functions, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(6) The drainage authority will, at the request of the undertaker and having regard to its statutory functions, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.

(7) 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 drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

**61.** Any dispute arising between the undertaker and the drainage authority under this Part must be determined by arbitration under article 48 (arbitration).

## PART 6

### FOR THE PROTECTION OF HIGHWAYS ENGLAND

#### *Application*

**62.** The provisions of this Part of this Schedule apply for the protection of Highways England and have effect unless otherwise agreed in writing between the undertaker and Highways England.

#### *Interpretation*

**63.**—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2) the latter prevail.

(2) In this Part of this Schedule—

“as built information” means one digital copy of the following information—

- (a) as constructed drawings in both PDF and Auto CAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used and test results and (where in the opinion of Highways England, following due diligence and assessment while acting reasonably, the carrying out of a specified work may have a materially adverse effect on any part of the highways drainage system maintained by Highways England) CCTV surveys;
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) the health and safety file; and
- (k) other such information as is required by Highways England to be used to update all relevant databases and to ensure compliance with Highways England’s Asset Data Management Manual as is in operation at the relevant time,

provided that the items referred to in paragraphs (c) and (g) will only be required to be submitted if the relevant specified work would require any of the works of a description referred to in article 17(1)(a) to (e) of this Order are to be carried out in relation to any highway for which Highways England is the highways authority.

“condition survey” means a survey of the condition of Highways England structures, assets (including, but not limited to, drainage and cabling) and pavements within the Order limits that in the reasonable opinion of Highways England may be affected by a specified work. A CCTV survey of specified drains will only form part of a condition survey where the undertaker, following due diligence and assessment, identifies a specified part of the highways drainage system maintained by Highways England that Highways England reasonably considers may be materially and adversely affected by a specified work;

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

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out a specified work;

“the DBFO contract” means the contract between Highways England and the highway operations and maintenance contractor for the maintenance and operation of parts of the trunk road network (including the M3, M25 and A30) which are within the Order limits or any successor or replacement contract that may be current at the relevant time;

“detailed design information” means drawings specifications and calculations as appropriate for the following—

- (a) regime of California Bearing Ratio testing;
- (b) earthworks including supporting geotechnical assessments required by CD622 (Managing geotechnical risk) of the DMRB or any successor document and any required strengthened earthworks appraisal form certification;
- (c) proposed departures from DMRB standards;
- (d) utilities diversions;
- (e) topographical survey;
- (f) health and safety information including any asbestos survey required by GD05/16 (asbestos management in trunk road assets) or any successor document; and
- (g) other such information that may be reasonably required by Highways England to inform the detailed design of a specified work.

“DMRB” means the Design Manual for Roads and Bridges or any replacement, revision or modification of it;

“the highway operations and maintenance contractor” means the contractor appointed by Highways England under the DBFO contract;

“highways structure” means structures or installations within the scope of the DMRB and that are situated under, over or adjacent to a motorway or other trunk road;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of a specified work as notified to Highways England from time to time;

“programme of works” means a document setting out the sequence and timetabling of a specified work;

“specified work” means so much of any work authorised by this Order, including any maintenance of that work, as is in or under the trunk road network for which Highways England is the highway authority; and

“trunk road network” for these protective provisions means—

- (a) the crossing under the M3 between junctions 1 and 2 and to the west of Littleton Lane, Ashford as show in the indicative location on the Works Plans Sheet No. 43 (dated June 2019);
- (b) the crossing under the M25 between junctions 11 and 12 and just south of the A320 as shown in the indicative location on the Works Plans Sheet No. 47 (dated June 2019); and
- (c) the crossing under the A30 is to the east of Staines reservoir and Long Lane as show in the indicative location on the Works Plans Sheet No. 53 (dated June 2019).



### *General*

**64.**—(1) The undertaker acknowledges that parts of the works authorised by this Order affect or may affect parts of the trunk road network in respect of which Highways England have appointed the highway operations and maintenance contractor.

(2) Notwithstanding the limits of deviation permitted pursuant to article 6(1) of this Order and the exception to the limits of deviation set out in article 6(2) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the trunk road network at a distance within 4 metres of the lowest point of the ground.

(3) Notwithstanding the powers granted to the undertaker pursuant to this Order, if the carrying out of any specified work would require any of the works listed in article 17(1)(a) to (e) of this Order to be carried out in relation to any highway for which Highways England is the highways authority, the undertaker must enter into an agreement with Highways England prior to the commencement of any such work.

### *Prior approvals*

**65.**—(1) No specified work may commence until—

- (a) the programme of works has been approved by Highways England, such approval not to be unreasonably withheld or delayed;
- (b) the following details relating to the specified work have been submitted to and approved by Highways England, such approval not to be unreasonably withheld or delayed—
  - (i) the detailed design information;
  - (ii) details of any proposed road space bookings with Highways England;
  - (iii) (if details have been supplied pursuant to sub-paragraph (ii)) a scheme of traffic management; and
  - (iv) the identity of the contractor and nominated persons.
- (c) (if the carrying out of a specified work requires the booking of any road space with Highways England) a scheme of traffic management and a process for stakeholder liaison has been submitted by the undertaker and approved by Highways England, such scheme to be capable of amendment by agreement between the undertaker and Highways England from time to time;
- (d) any stakeholder liaison that may be required has taken place in accordance with the process for such liaison agreed between the undertaker and Highways England under paragraph (c);
- (e) any further information that Highways England may reasonably request within 14 days of the submission of the detailed design of a specified work has been supplied to Highways England; and
- (f) a condition survey and a reasonable regime of monitoring the structures, assets and pavements that were surveyed under the condition survey has been submitted to and approved, acting reasonably, by Highways England.

(2) Highways England must provide the undertaker with a list, which is to be agreed between the parties acting reasonably, of all the structures, assets and pavements to be subject to both a condition survey and reasonable regime of monitoring pursuant to sub-paragraph (1)(f) and paragraph 68(1) of this Part before the first condition survey is conducted and the reasonable regime of monitoring is implemented.

(3) Highways England must prior to the commencement of a specified work inform the undertaker of the identity of the person who will act as a point of contact on behalf of Highways England

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

to consider the information required under sub-paragraph (1) and of the identity of the person or persons who are authorised to give consent or approval on behalf of Highways England for any matter requiring approval or consent in these provisions.

- (4) Any approval of Highways England required by this paragraph—
- (a) must not be unreasonably withheld or delayed;
  - (b) in the case of a refusal must be accompanied by a statement of grounds for refusal;
  - (c) is deemed to have been refused if it is neither given or refused within 56 days of the submission of the relevant information (if further information is requested by Highways England any such request must be submitted to the undertaker within 28 days of submission of the relevant information under this sub-paragraph (c) and the provision of such further information by the undertaker will not be deemed to constitute a new application for approval pursuant to this paragraph); and
  - (d) may be given subject to any reasonable conditions as Highways England considers necessary.

(5) If the undertaker requires entry onto land which forms part of the trunk road network to exercise the powers over that land set out in article 20 (authority to survey and investigate the land) of this Order, the undertaker must supply details of any proposed road space bookings (in accordance with Highways England’s Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy) and submit to Highways England and obtain the approval of Highways England of a scheme of traffic management prior to the exercise of the power.

#### *Construction of the specified work*

**66.**—(1) The undertaker must, prior to commencement of a specified work, give to Highways England 28 days’ notice in writing of the date on which the specified work will start unless otherwise agreed by Highways England.

(2) If the carrying out of any part of the authorised development requires the booking of road space with Highways England, the undertaker must comply with Highways England’s usual road space booking procedures prior to and during the carrying out of the specified work and no specified work for which a road space booking with Highways England is required must commence without a road space booking having first been secured from Highways England.

(3) Any specified work must be carried out to the reasonable satisfaction of Highways England (acting reasonably) in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 65(1)(a) or as subsequently varied by agreement between the undertaker and Highways England;
- (b) where relevant, the DMRB, the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works) together with all other relevant standards as required by Highways England to include, without limitation, all relevant interim advice notes and any amendment to or replacement thereof for the time being in force save to the extent that any departures or exceptions from those standards apply which have been approved by Highways England; and
- (c) any conditions of Highways England notified by Highways England to the undertaker pursuant to paragraph 65(4)(d) of this Part.

(4) The undertaker must ensure that (where possible) without entering the highway—

- (a) the highway is kept free from mud, soil and litter as a result of the carrying out of a specified work; and

(b) the specified work is carried out without disturbance to the highway and so that the highway remains open for traffic at all times unless otherwise agreed with Highways England.

(5) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must have been previously notified to the undertaker by Highways England) to gain access to a specified work for the purposes of inspection and supervision of a specified work or method of construction of such work.

(6) If any specified work is constructed—

(a) other than in accordance with the requirements of this Part of this Schedule; or

(b) in a way that causes damage to the highway, any highway structure or asset or any other land of Highways England,

Highways England 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 put right any damage notified to the undertaker under this Part of this Schedule.

(7) If within 56 days of the date on which a notice under sub-paragraph (6) is served on the undertaker, the undertaker has failed to take steps to comply with the notice, Highways England may carry out the steps required of the undertaker and may recover from the undertaker any expenditure reasonably incurred by Highways England in so doing, such sum to be payable within 30 days of demand. Where the steps required to be taken pursuant to any notice require the submission of any information for the prior approval of Highways England under paragraph 65 of this Part, the submission of that information will evidence that the undertaker has taken steps to comply with a notice served by Highways England under sub-paragraph (6).

(8) Highways England may, at its discretion, in its notice in writing to the undertaker given pursuant to sub-paragraph (6) state that Highways England intend to put right the damage notified to the undertaker, and if it intends to do so it must give the undertaker not less than 28 days' notice of its intention to do so and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

(9) Nothing in this Part of this Schedule prevents Highways England from, in the event of an emergency or to prevent the occurrence of danger to the public, carrying out any work or taking any such action as it reasonably believes to be necessary as a result or in connection with of the carrying out of the authorised works without prior notice to the undertaker and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

### *Payments*

**67.—**(1) The undertaker must pay to Highways England a sum equal to the whole of any costs and expenses which Highways England incurs (including costs and expenses for using internal or external staff) in relation to any specified work including—

(a) the checking and approval of the information required under paragraph 65(1);

(b) the supervision of a specified work;

(c) contractual costs properly payable to the highway operations and maintenance contractor as a consequence of any specified work, including costs incurred by the highway operations and maintenance contractor in carrying out the tasks referred to in sub-paragraphs (a) and (b) of this paragraph, in which case Highways England will be responsible for the payment of any sums received from the undertaker under this paragraph to the highway operations and maintenance contractor;

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

- (d) reasonable legal and administrative costs, reasonably and properly incurred, in relation to sub-paragraphs (a), (b) and (c); and
- (e) any value added tax which is payable by Highways England only in respect of such costs and expenses arising under this paragraph 67(1) and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the HE costs”.

(2) The undertaker must pay to Highways England upon demand and prior to such costs being incurred the total costs that Highways England believe will be properly and necessarily incurred by Highways England in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing any specified work or that are incurred in connection with a specified work.

(3) Highways England must provide the undertaker with a fully itemised invoice showing its estimate of the HE costs prior to the commencement of a specified work and the undertaker must pay to Highways England the estimate of the HE costs prior to commencing a specified work and in any event prior to Highways England incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, Highways England reasonably believes that the HE costs will exceed the estimated HE costs in respect of a specified work it may give notice to the undertaker of the amount that it believes the HE costs will exceed the estimate of the HE costs (excess) and the undertaker must pay to Highways England within 28 days of the date of the notice a sum equal to the excess.

(5) Highways England must give the undertaker a final account of the costs, as a fully itemised invoice, referred to in sub-paragraph (1) within 30 days of the undertaker notifying to Highways England that a specified work has been completed.

(6) Within 30 days of the issue of the final account—

- (a) if the final account shows a further sum as due to Highways England the undertaker must pay to Highways England the sum shown due to it; and
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by Highways England, Highways England must refund the difference to the undertaker.

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1 per cent above the rate payable in respect of compensation under section 32 of the 1961 Act for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

#### *Completion of a specified work*

**68.**—(1) Within 56 days of the completion of a specified work, the undertaker must arrange for the highway structures, assets and pavements that were the subject of the condition survey carried out in respect of the specified work to be re-surveyed and must submit the re-survey to Highways England for its approval.

(2) If the re-survey carried out pursuant to sub-paragraph (1) indicates that any damage has been caused to any highways structure or pavement, the undertaker must submit a scheme for remedial works in writing to Highways England for its approval in writing, which must not be unreasonably withheld or delayed, and must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, Highways England may carry out the steps required of the undertaker and may recover from the undertaker any expenditure reasonably incurred by Highways England in so doing, such sum to be payable within 30 days of demand.

(4) Highways England may, at its discretion, at the same time as giving its approval to the condition survey, give notice in writing to the undertaker stating that Highways England will remedy the damage identified by the condition survey and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

(5) Within 10 weeks of the completion of a specified work, the undertaker must submit to Highways England the as built information, both in hard copy and electronic form.

(6) The undertaker must make available to Highways England upon reasonable request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

#### *Indemnification*

**69.**—(1) The undertaker must indemnify Highways England from and against all costs, expenses, damages, losses and liabilities suffered by Highways England arising from or in connection with any claim, demand, action or proceedings resulting from—

- (a) the construction or maintenance of a specified work; and
- (b) the placing or presence in or under the highways of the pipeline being constructed as part of the authorised development,

provided that Highways England notifies the undertaker upon receipt of any claim and following the acceptance of any claim notifies the quantum of the claim to the undertaker in writing.

(2) Within 30 days of the receipt of the notification referred to in sub-paragraph (1) the undertaker must pay to Highways England the amount specified as the quantum of such claim.

(3) Sub-paragraphs (1) and (2) do not apply if the costs, expenses, liabilities and damages were caused by or arose out of the neglect or default of Highways England or its officers, servants agents or contractors or any person or body for whom it is responsible.

#### *Expert determination*

**70.**—(1) Article 48 (arbitration) of this Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;

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

- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48 (arbitration).

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

## PART 7

### FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

#### *Application*

**71.**—(1) For the protection of the statutory undertakers referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned, have effect.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the promoter and National Grid, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid before or within 15 days of the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 81(3)(b)).

#### *Interpretation*

**72.** In this Part of this Schedule—

“acceptable insurance” means a third party liability insurance(s) effected and maintained by the undertaker and/or its contractors to a cumulative level of not less than £25,000,000 (twenty five million pounds) per occurrence or series of occurrences arising out of one event. Such insurance(s) must be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters such policy must include (but without limitation)—

- (a) the statutory undertaker as a Co-Insured;
- (b) a cross liabilities clause; and
- (c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with a cumulative cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

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

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

“apparatus” means electric lines or electrical plant as defined in section 64 of the Electricity Act 1989, within the work limits, belonging to or maintained by the statutory undertaker together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the statutory undertaker concerned for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use, maintenance and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2(1) of this Order save that for the purposes of paragraphs 79 and 81 of this Part of this Schedule it will include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment and commencement will be construed to have the same meaning;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the statutory undertaker (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for the statutory undertaker’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the statutory undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus;

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

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 77(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 77(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (the statutory 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/SSW/22”);

“statutory undertaker” means National Grid Electricity Transmission plc as a licence holder within the meaning of Part 1 of the Electricity Act 1989; and

“undertaker” means the undertaker as defined in article 2 (interpretation) of this Order.

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

### *On Street Apparatus*

73. Save in respect of paragraph 74 (apparatus of undertakers in stopped up streets), 79 (retained apparatus: protection), 80 (expenses) and 81 (indemnity) this part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

### *Apparatus of undertakers in stopped up streets*

74. Regardless of the temporary stopping up or diversion of any highway under the powers of article 13 (temporary closure, alteration, diversion or restriction of streets and public rights of way), the statutory undertaker is at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as is 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*

75. The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of the statutory undertaker (such consent not to be unreasonably withheld or delayed).

### *Acquisition of land*

76.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not acquire any land interest or apparatus or extinguish any easement and/or other interest of the statutory undertaker otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) The undertaker and the statutory undertaker agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by the statutory undertaker and/or other enactments relied upon by the statutory undertaker as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(3) Any agreement or consent granted by the statutory undertaker under paragraph 79 (retained apparatus: protection) or any other paragraph of this Part of this Schedule, will not be taken to constitute agreement under sub-paragraph (1).

### *Removal of apparatus*

77.—(1) If, in the exercise of the powers conferred by this Order or under an agreement reached in accordance with paragraph 76 (acquisition of land) or in any other authorised manner, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed or requires that the statutory undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of the 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 in accordance with sub-paragraph (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 requires the removal of any apparatus placed in that land, it must give to the statutory undertaker 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker to its reasonable satisfaction (taking into account paragraph 78(1)) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker within the order limits, 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 statutory 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 save that this obligation will only extend to the requirement for the statutory undertaker to use its compulsory purchase powers if it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by 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 statutory undertaker and the undertaker.

(5) The statutory undertaker must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the statutory 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.

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

**78.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for the statutory undertaker facilities and rights in land for the construction, use, maintenance and protection 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 statutory undertaker and must be no less favourable on the whole to the statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by the statutory undertaker.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the statutory undertaker under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the statutory undertaker 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 in the matter will be referred to arbitration in accordance with paragraph 85 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

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

*Retained apparatus: Protection: National Grid Electricity Transmission plc*

**79.**—(1) Not less than 56 days before the commencement of any authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 77(2) or otherwise, the undertaker must submit to the statutory undertaker a plan of the works to be executed and seek from the statutory undertaker details of the underground extent of their electricity tower foundations.

(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 involve embankment works within 15 metres of any apparatus, the plan to be submitted to the statutory undertaker under sub-paragraph (1) must 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 including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid’s engineers; and
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until the statutory undertaker has given written approval of the plan so submitted.

(5) Any approval of the statutory undertaker required under sub-paragraphs (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, the statutory undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and no less convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) 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 will be entitled to watch and inspect the execution of those works.

(8) Where the statutory undertaker reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the statutory undertaker's reasonable satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required.

(9) If the statutory undertaker in accordance with sub-paragraphs (6) or (8) 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 71 to 73 and 76 to 78 apply as if the removal of the apparatus had been required by the undertaker under paragraph 77(2).

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

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

(a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with the statutory undertaker's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

(13) Not less than 56 days before the commencement of any specified works the undertaker must submit to the statutory undertaker a ground monitoring scheme in respect of those works, and as soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that the statutory undertaker retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 81 (indemnity).

#### *Expenses*

**80.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to the statutory undertaker on demand following submission of a claim in writing from the statutory undertaker all charges, costs and expenses reasonably anticipated or incurred by the statutory undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be

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

required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by the statutory undertaker in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by the statutory undertaker as a consequence of the statutory undertaker—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 77(3) if it elects to do so; and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting the statutory undertaker;
- (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; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There 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.

(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 paragraph 85 (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 by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus will 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 will 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 undertaker in respect of works by virtue of sub-paragraph (1) will, 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.

### *Indemnity*

**81.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of the statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the statutory undertaker, or the statutory undertaker becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by the statutory undertaker in making good such damage or restoring the supply; and
- (b) indemnify the statutory undertaker for any other properly incurred expenses, loss, demands, proceedings, damages, claims, penalty or costs reasonably incurred by or recovered from the statutory undertaker, by reason or in consequence of any such damage or interruption or the statutory undertaker becoming liable to any third party as aforesaid other than arising from any default of the statutory undertaker.

(2) The fact that any act or thing may have been done by the statutory undertaker on behalf of the undertaker or in accordance with a plan approved by the statutory undertaker or in accordance with any requirement of the statutory undertaker or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the statutory undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or wilful act or default of the statutory undertaker, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by the statutory undertaker as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-paragraph 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 81.

(4) The statutory undertaker must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise is, unless payment is required in connection with a statutory compensation scheme, to be made without first consulting the undertaker and considering their representations.

(5) The statutory undertaker must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

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

(6) The statutory undertaker must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within the statutory undertaker's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of the statutory undertaker's control and if reasonably requested to do so by the undertaker, the statutory undertaker must provide an explanation of how the claim has been minimised, where relevant.

(7) Save where the undertaker is Esso Petroleum Company Limited, or a group company of sufficient covenant strength to self-insure, the undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised works on any land owned by the statutory undertaker or in respect of which the statutory undertaker has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of the statutory undertaker's apparatus unless and until the statutory undertaker is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to the statutory undertaker that it will maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and the statutory undertaker has confirmed the same in writing to the undertaker (such confirmation not to be unreasonably withheld or delayed).

#### *Enactments and agreements*

**82.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the statutory undertaker and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and the statutory undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

#### *Co-operation*

**83.—(1)** Where in consequence of the proposed construction of any of the authorised works, the undertaker or an undertaker requires the removal of apparatus under paragraph 77(2) or (3) or an undertaker makes requirements for modifications to the undertaker's works or for the protection or alteration of apparatus under paragraph 79 (retained apparatus: protection) or the statutory undertaker is required to access its apparatus in temporarily stopped up streets under paragraph 74, the undertaker must use its best endeavours to co-ordinate the execution of the works—

- (a) in the interests of safety;
- (b) taking into account the efficient and economic execution of the authorised development; and
- (c) taking into account the need to ensure the safe and efficient operation of the statutory undertaker's undertaking,

and the statutory undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertakers or statutory undertaker's consent, agreement, approval or expression of satisfaction is required in relation to plans, documents or other information submitted by the undertaker or statutory undertaker or the taking of action by the undertaker or statutory undertaker, it must not be unreasonably withheld or delayed.

#### *Access*

**84.** If in consequence of the agreement reached in accordance with paragraph 76(1) 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 statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

#### *Arbitration*

**85.** Save for differences or disputes arising under paragraph 79 (retained apparatus: protection) any difference or dispute arising between the undertaker and the statutory undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the statutory undertaker, be determined by arbitration in accordance with article 48 (arbitration).

#### *Notices*

**86.** The plans submitted to the statutory undertaker by the undertaker pursuant to paragraph 79(1) must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as the statutory undertaker may from time to time appoint instead for that purpose and notify to the undertaker.

## **PART 8**

### **FOR THE PROTECTION OF SOUTHERN ELECTRIC POWER DISTRIBUTION PLC AS ELECTRICITY UNDERTAKER**

#### *Application*

**87.** For the protection of SSE the following provisions will, unless otherwise agreed in writing between the undertaker and SSE, have effect.

#### *Interpretation*

**88.** In this Part of this Schedule—

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

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, substations, cables or other apparatus belonging to or maintained by SSE for the purposes of electricity distribution together with any alternative apparatus, replacement apparatus and/or such other apparatus constructed pursuant to the Order that becomes operational apparatus of SSE for the purposes of distribution and/or supply of electricity and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2(1) (interpretation) of this Order and commencement will be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include low risk works.

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are reasonably necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

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

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by SSE (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for SSE’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“low risk works” means intrusive remediation works, intrusive environmental (including archaeological) surveys and investigations, intrusive site and soil survey, erection of fencing to site boundaries, the diversion or laying of services or intrusive environmental mitigation measures;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SSE including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

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

“rights” includes rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“SSE” means Southern Electric Power Distribution plc (company number 04094290 whose registered office is at No.1 Forbury Place, 43 Forbury Road, Reading, United Kingdom, RG1 3JH) or its successors in title or successor bodies and/or any successor as an electricity distribution licence holder pursuant to the Electricity Act 1989;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 5 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 93(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 93(2) or otherwise;

“undertaker” means the undertaker as defined in article 2 (interpretation) of this Order.

### *On Street Apparatus*

**89.**—(1) Except for paragraphs 90 (apparatus of SSE in stopped up streets), 93 (removal of apparatus) in so far as sub-paragraph 3(2) applies, 94 (facilities and rights for alternative apparatus) in so far as sub-paragraph (2) below applies, 95 (retained apparatus: protection), 96 (retained apparatus: protection – overhead lines), 97 (expenses) and 98 (indemnity), of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of



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

SSE, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SSE are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraphs 93 (removal of apparatus) and 94 (facilities and rights for alternative apparatus) will apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

#### *Apparatus of SSE in stopped up streets*

**90.** Regardless of the temporary stopping up or diversion of any highway under the powers of article 13 (temporary closure, alteration, diversion or restriction of streets and public rights of way), SSE will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as is 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*

**91.—(1)** The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of SSE and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of SSE or any interruption in the distribution of electricity by SSE, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by SSE in making good such damage or restoring the supply; and, subject to sub-paragraph (2), must—

- (a) pay compensation to SSE for any loss sustained by it by reason or in consequence of any such damage or interruption; and
- (b) indemnify SSE against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by SSE, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of SSE or its contractors or workmen.

(3) SSE will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof is to be made by SSE, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

#### *Acquisition of land*

**92.—(1)** Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not appropriate or acquire any land interest or appropriate, acquire, or extinguish, interfere with or override any easement, other interest or right and/or apparatus of SSE otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between SSE and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of SSE

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

and/or affects the provisions of any enactment or agreement regulating the relations between SSE and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as SSE reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between SSE and the undertaker acting reasonably and which must be no less favourable on the whole to SSE unless otherwise agreed by SSE.

(3) The undertaker and SSE agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SSE and/or other enactments relied upon by SSE as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

(4) Any agreement or consent granted by SSE under paragraph 95, 96 or any other paragraph of this Part of this Schedule, will not be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement between the parties in sub-paragraph (1) that involves de-commissioned apparatus being left in situ in any land of the undertaker, the undertaker must accept a surrender of any existing easement and/or other interest of SSE in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release SSE from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any SSE right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 93 do not apply, the undertaker must—

- (a) retain any notice of SSE's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of SSE's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of SSE's easement, right or other interest in relation to such acquired land; and
- (c) provide up to date official entry copies to SSE within 20 working days of receipt of such up to date official entry copies.

#### *Removal of apparatus*

**93.**—(1) If, in the exercise of the powers conferred by this Order or under an agreement reached in accordance with paragraph 92 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed or requires that SSE's apparatus is relocated or diverted, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of SSE to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of SSE and 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 requires the removal of any apparatus placed in that land, it must give to SSE advance written notice of that requirement, together with a plan and section 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 SSE reasonably needs to move or remove any of its apparatus) the undertaker must afford to SSE to its reasonable satisfaction (taking into account paragraph 94(1)) the necessary facilities and rights—

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

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SSE in respect of the apparatus);
  - (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SSE in respect of the apparatus); and
  - (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SSE in respect of the apparatus).
- (3) If 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, SSE 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 assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation will only extend to the requirement for SSE to use its compulsory purchase powers if SSE in its absolute discretion elects to do so.
- (4) Any alternative apparatus to be constructed in land of or land secured by 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 SSE and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 102 (arbitration) of this Part of this Schedule.
- (5) SSE must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SSE of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to SSE to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

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

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with SSE under sub-paragraph (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 materially less favourable on the whole to SSE than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in SSE's reasonable opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 102 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to SSE as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### *Retained apparatus: protection of SSE*

**95.**—(1) Not less than 14 days before beginning any low risk works (which in each case does not take place more than 300mm below the surface of the ground, and in respect of the diversion or laying of services, excluding apparatus) the undertaker must submit to SSE a plan identifying the nature of the works and the planned interaction with apparatus and the undertaker will undertake

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

those works in accordance with the requirements of HSE’s guidance notes: “HS G47 – Avoiding Danger from underground services” and “GS6 Avoiding danger from overhead power lines”.

(2) Save where sub-paragraph (1) applies, not less than 56 days before the commencement of any specified works the undertaker must submit to SSE a plan and, if reasonably required by SSE, a ground monitoring scheme in respect of those works.

(3) The plan to be submitted to SSE under sub-paragraph (2) must 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 including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(4) The undertaker must not commence any works to which sub-paragraphs (2) and (3) apply until SSE has given written approval of the plan so submitted.

(5) Any approval of SSE required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs (2) and/or (3) apply, SSE may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and no less convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraphs (2) and (3) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and SSE and in accordance with all conditions imposed under sub-paragraph (5)(a), and SSE will be entitled to watch and inspect the execution of those works.

(8) Where SSE reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to SSE’s reasonable satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required.

(9) Any requirements made by SSE under sub-paragraph (8) must be made within a period of 42 days beginning with the date on which a plan under sub-paragraph (2) is submitted to it.

(10) If SSE, 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 87 to 89 and 92 to 94 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 93(2).

(11) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 14 days (in respect of low risk works) or otherwise 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

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

- (a) the conditions imposed under sub-paragraph (5)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (13) at all times.

(13) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that SSE retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 97.

*Retained apparatus: protection of SSE as Electricity Undertaker – Overhead Lines*

**96.**—(1) Not less than 56 days before the commencement of any specified work that does not require the removal of apparatus under paragraph 93 (removal of apparatus) the undertaker must submit to SSE a plan and seek from SSE details of the underground extent of their electricity tower foundations.

(2) The plan to be submitted under sub-paragraph (1) must show—

- (a) the exact position of the specified work;
- (b) the level at which the specified work is proposed to be constructed or renewed;
- (c) the manner of the construction or renewal of the specified work including details of excavation and positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) details of any ground monitoring scheme if required.

(3) In relation to any works which will or may be situated on, over, under or within 15 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must include a method statement which must in addition to the matters set out in sub-paragraph (2)—

- (a) describe details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstrate that pylon foundations will not be affected prior to, during and post construction;
- (c) describe details of load bearing capacities of trenches;
- (d) describe details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) provide a written management plan for high voltage hazard during construction and on-going maintenance of the cable route;
- (f) provide written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assess earth rise potential if reasonably required by SSE's engineers; and
- (h) provide evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works requiring the submission of a plan under sub-paragraph (1) until SSE has given written approval of the plan so submitted.

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

(5) Any approval of SSE required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and
- (b) must not be unreasonably withheld or delayed.

(6) In relation to a work requiring the submission of a plan under sub-paragraph (1), SSE may require such modifications to be made to the plan 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 no less convenient means of access to any apparatus.

(7) Works requiring the submission of a plan under sub-paragraph (1) must be executed only in accordance with the plan, as amended from time to time by agreement between the undertaker and SSE and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5), (6), (8) or (9) by SSE for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and SSE is to be entitled to watch and inspect the execution of those works.

(8) Where SSE reasonably requires any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to SSE's reasonable satisfaction prior to the commencement of works requiring the submission of a plan under sub-paragraph (1).

(9) If SSE in accordance with sub-paragraph (6) or (8) 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 90 and 91 and 93 to 95 apply as if the removal of the apparatus had been required by the undertaker under paragraph 93(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

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

- (a) comply with conditions imposed under sub-paragraph (5)(a) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) As soon as reasonably practicable after any ground subsidence event, the undertaker must implement an appropriate ground mitigation scheme.

### *Expenses*

**97.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to SSE on demand, following receipt of an invoiced demand (including where necessary anticipated disbursements) all charges, costs and expenses reasonably anticipated or incurred by SSE in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or rights or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by SSE in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including reasonable professional fees) incurred by SSE as a consequence of SSE;

- (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 93(3) if it elects to do so; and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SSE;
- (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 such works referred to in this Part of this Schedule;
  - (g) any watching brief pursuant to paragraph 95(7) or paragraph 96(7).
- (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 and which is not re-used as part of the alternative apparatus, that value being calculated after removal.
- (3) If in accordance with the provisions of this Part of this Schedule—
- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
  - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,
- and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (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 SSE by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.
- (4) For the purposes of sub-paragraph (3)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus will 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 will 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 SSE in respect of works by virtue of sub-paragraph (1) will, 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 SSE 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.

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

### *Indemnity*

**98.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of SSE, or there is any interruption in any service provided, or in the supply of any goods, by SSE, or SSE becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost properly incurred by SSE in making good such damage or restoring the supply; and
- (b) indemnify SSE for any other properly incurred expenses, loss, demands, proceedings, damages, claims, penalty (but not criminal penalties, unless such criminal penalties are directly attributable to the undertaker or any person authorised or employed by him) or costs properly incurred by or recovered from SSE, by reason or in consequence of any such damage or interruption or SSE becoming liable to any third party as aforesaid other than arising from any default of SSE.

(2) The fact that any act or thing may have been done by SSE on behalf of the undertaker or in accordance with a plan approved by SSE or in accordance with any requirement of SSE or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless SSE fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or wilful act or default of SSE, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by SSE as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph.

(4) SSE must give the undertaker reasonable notice of any such third party claim or demand.

(5) No settlement, or compromise or admission which might be prejudicial must, unless payment is required in connection with a statutory compensation scheme, be made without first obtaining the undertaker’s agreement and if the undertaking acting reasonably does not agree SSE and the undertaker will acting jointly, proceed to manage any settlement negotiations and or any litigation which may arise from the third party claim or demand.

### *Enactments and agreements*

**99.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SSE and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker



and SSE in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

#### *Co-operation*

**100.**—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or SSE requires the removal of apparatus under paragraph 93(2) or 93(3) or SSE makes requirements for modifications to the undertaker's works or for the protection or alteration of apparatus under paragraph 95 or SSE needs to access its apparatus in stopped up streets under paragraph 90, the undertaker must use its best endeavours to co-ordinate the execution of the works:

- (a) in the interests of safety;
- (b) taking into account the efficient and economic execution of the authorised development; and
- (c) taking into account the need to ensure the safe and efficient operation of SSE's undertaking,

and SSE must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SSE's consent, agreement, approval or expression of satisfaction is required in relation to plans, documents or other information submitted by SSE or the taking of action by SSE, it must not be unreasonably withheld or delayed.

#### *Access*

**101.** If in consequence of the agreement reached in accordance with paragraph 92(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SSE in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable SSE to maintain or use the apparatus no less effectively than was possible before such obstruction and both parties must use their best endeavours to co-operate for that purpose.

#### *Arbitration*

**102.** Save for differences or disputes arising under paragraphs 98(5) and paragraph 95 any difference or dispute arising between the undertaker and SSE under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SSE, be determined by arbitration in accordance with article 48 (arbitration).

#### *Notices*

**103.** The plans submitted to SSE by the undertaker pursuant to paragraphs 95(1) and 96(1) must be sent to SSE at their registered or such other address as SSE may from time to time appoint instead for that purpose and notify to the undertaker.

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

## PART 9

### FOR THE PROTECTION OF SOUTHERN GAS NETWORKS PLC AS GAS UNDERTAKER

#### *Application*

**104.** For the protection of SGN the following provisions will, unless otherwise agreed in writing between the undertaker and SGN, have effect.

#### *Interpretation*

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

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

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by SGN for the purposes of gas distribution together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SGN for the purposes of transmission, distribution and/or supply of gas and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2(1) of this Order and commencement will be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include low risk works;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are reasonably necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by SGN (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for SGN’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

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

“low risk works” means intrusive remediation works, intrusive environmental (including archaeological) surveys and investigations, intrusive site and soil survey, erection of fencing to site boundaries, the diversion or laying of services or intrusive environmental mitigation measures;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SGN including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

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

“rights” includes rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“SGN” means Southern Gas Networks plc or its successors in title or successor bodies and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986.

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 5 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 110(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 110(2) or otherwise;

“undertaker” means the undertaker as defined in article 2 of this Order.

#### *On Street Apparatus*

**106.**—(1) Except for paragraphs 107 (apparatus of SGN in stopped up streets), 110 (removal of apparatus) in so far as sub-paragraph (2) applies, 111 (facilities and rights for alternative apparatus) in so far as sub-paragraph (2) applies, 112 (retained apparatus: protection), 113 (expenses) and 114 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of SGN, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SGN are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraphs 110 and 111 will apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

#### *Apparatus of SGN in stopped up streets*

**107.** Regardless of the temporary stopping up or diversion of any highway under the powers of article 13 (temporary closure, alteration, diversion or restriction of streets and public rights of way), SGN will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as is 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.

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

### *Protective works to buildings*

**108.**—(1) The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of SGN and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of SGN or any interruption in the supply of gas by SGN, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by SGN in making good such damage or restoring the supply; and, subject to sub-paragraph (2), must—

- (a) pay compensation to SGN for any loss sustained by it by reason or in consequence of an such damage or interruption; and
- (b) indemnify SGN against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by SGN, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of SGN or its contractors or workmen.

(3) SGN will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof is to be made by SGN, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

### *Acquisition of land*

**109.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not appropriate or acquire any land interest or appropriate, acquire, or extinguish, interfere with or override any easement, other interest or right and/or apparatus of SGN otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between SGN and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of SGN and/or affects the provisions of any enactment or agreement regulating the relations between SGN and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as SGN reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between SGN and the undertaker acting reasonably and which must be no less favourable on the whole to SGN unless otherwise agreed by SGN.

(3) The undertaker and SGN agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SGN and/or other enactments relied upon by SGN as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(4) Any agreement or consent granted by SGN under paragraph 112 or any other paragraph of this Part of this Schedule, will not be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement between the parties in sub-paragraph (1) that involves de-commissioned apparatus being left in situ in any land of the undertaker, the undertaker must accept a

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

surrender of any existing easement and/or other interest of SGN in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release SGN from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any SGN right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 110 do not apply, the undertaker must:

- (a) retain any notice of SGN's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of SGN's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of SGN's easement, right or other interest in relation to such acquired land; and
- (c) provide up to date official entry copies to SGN within 20 working days of receipt of such up to date official entry copies.

#### *Removal of apparatus*

**110.**—(1) If, in the exercise of the powers conferred by this Order or under an agreement reached in accordance with paragraph 109 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed or requires that SGN's apparatus is relocated or diverted, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of SGN to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in subparagraph (2) have been provided, to the reasonable satisfaction of SGN and in accordance with subparagraphs (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 requires the removal of any apparatus placed in that land, it must give to SGN advance written notice of that requirement, together with a plan and section 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 SGN reasonably needs to move or remove any of its apparatus) the undertaker must afford to SGN to its reasonable satisfaction (taking into account paragraph 111(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in subparagraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SGN 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 assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation will only extend to the requirement for SGN to use its compulsory purchase powers if SGN in its absolute discretion elects to do so.

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

(4) Any alternative apparatus to be constructed in land of or land secured by 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 SGN and the undertaker or in default of agreement settled by arbitration in accordance paragraph 118 (arbitration) of this Part of this Schedule.

(5) SGN must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SGN of such facilities and rights as are referred to in sub-paragraphs (2) or (3) have been afforded to SGN to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

*Facilities and rights for alternative apparatus*

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with SGN under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are materially less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in ‘reasonable opinion’) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 118 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to SGN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

*Retained apparatus: protection of SGN*

**112.**—(1) Not less than 14 days before beginning any low risk works (which in each case does not take place more than 900mm below the surface of the ground, and in respect of the diversion or laying of services, excluding apparatus) the undertaker must submit to SGN a plan identifying the nature of the works and the planned interaction with apparatus and the undertaker will undertake those works in accordance with the requirements of SGN’s publication SGN/WI/SW/2 “Work Instruction for Safe Working in the Vicinity of Pipelines & Associated Installations operating >7barg”.

(2) Save where sub-paragraph (1) applies, not less than 56 days before the commencement of any specified works the undertaker must submit to SGN a plan and, if reasonably required by SGN, a ground monitoring scheme in respect of those works.

(3) The plan to be submitted to SGN under sub-paragraph (2) must 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 including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;

- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
  - (f) any intended maintenance regimes.
- (4) The undertaker must not commence any works to which sub-paragraphs (2) and (3) apply until SGN has given written approval of the plan so submitted.
- (5) Any approval of SGN required under sub-paragraph (4)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
  - (b) must not be unreasonably withheld or delayed.
- (6) In relation to any work to which sub-paragraphs (2) and/or (3) apply, SGN may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and no less convenient means of access to any apparatus.
- (7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraphs (2) and (3) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and SGN and in accordance with all conditions imposed under sub-paragraph (5)(a), and SGN will be entitled to watch and inspect the execution of those works.
- (8) Where SGN reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to 'reasonable satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required.
- (9) Any requirements made by SGN under sub-paragraph (8) must be made within a period of 42 days beginning with the date on which a plan under sub-paragraph (2) is submitted to it.
- (10) If SGN, 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 104 to 106 and 109 to 111 apply as if the removal of the apparatus had been required by the undertaker under paragraph 110(2).
- (11) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 14 days (in respect of low risk works) or otherwise 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.
- (12) The undertaker is not required to comply with sub-paragraph (2) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to SGN notice as soon as is reasonably practicable and a plan of those works and must comply with—
- (a) the conditions imposed under sub-paragraph (5)(a) insofar as is reasonably practicable in the circumstances; and
  - (b) sub-paragraph (13) at all times.
- (13) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that SGN retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 113.

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

### *Expenses*

**113.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SGN following receipt of an invoiced demand (including where necessary anticipated disbursements) all charges, costs and expenses reasonably anticipated or incurred by SGN in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or rights or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by SGN in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including reasonable professional fees) incurred by SGN as a consequence of SGN;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 110(3) if it elects to do so; and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SGN;
- (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 such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 112(7).

(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 and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (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 SGN by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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



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

- (a) an extension of apparatus to a length greater than the length of existing apparatus will 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 will 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.

#### *Indemnity*

**114.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of SGN, or there is any interruption in any service provided, or in the supply of any goods, by SGN, or SGN becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost properly incurred by SGN in making good such damage or restoring the supply; and
  - (b) indemnify SGN for any other properly incurred expenses, loss, demands, proceedings, damages, claims, penalty (but not criminal penalties, unless such criminal penalties are directly attributable to the undertaker or any person authorised or employed by him) or costs properly incurred by or recovered from SGN, by reason or in consequence of any such damage or interruption or SGN becoming liable to any third party as aforesaid other than arising from any default of SGN.
- (2) The fact that any act or thing may have been done by SGN on behalf of the undertaker or in accordance with a plan approved by SGN or in accordance with any requirement of SGN or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless SGN fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.
- (3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—
- (a) any damage or interruption to the extent that it is attributable to the neglect or wilful act or default of SGN, its officers, servants, contractors or agents; and
  - (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by SGN as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 114.

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

(4) SGN must give the undertaker reasonable notice of any such third party claim or demand.

(5) No settlement, or compromise or admission which might be prejudicial must, unless payment is required in connection with a statutory compensation scheme, be made without first obtaining the undertaker's agreement and if the undertaker acting reasonably does not agree SGN and the undertaker will acting jointly, proceed to manage any settlement negotiations and/or any litigation which may arise from the third party claim or demand.

#### *Enactments and agreements*

**115.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SGN and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and SGN in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

#### *Co-operation*

**116.—**(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or SGN requires the removal of apparatus under paragraph 110(2) or SGN makes requirements for the protection or alteration of apparatus under paragraph 112 or SGN needs to access its apparatus in stopped up streets under paragraph 107, the undertaker must use its best endeavours to co-ordinate the execution of the works—

- (a) in the interests of safety;
- (b) taking into account the efficient and economic execution of the authorised development; and
- (c) taking into account the need to ensure the safe and efficient operation of SGN's undertaking,

and SGN must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SGN's consent, agreement, approval or expression of satisfaction is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

#### *Access*

**117.** If in consequence of the agreement reached in accordance with paragraph 109(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable SGN to maintain or use the apparatus no less effectively than was possible before such obstruction and both parties must use their best endeavours to co-operate for that purpose.

#### *Arbitration*

**118.** Save for differences or disputes arising under paragraphs 112 and 114(5) any difference or dispute arising between the undertaker and SGN under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SGN, be determined by arbitration in accordance with article 48 (arbitration).

### *Notices*

**119.** The plans submitted to SGN by the undertaker pursuant to paragraph 112 must be sent to SGN at easements@sgn.co.uk or such other address as SGN may from time to time appoint instead for that purpose and notify to the undertaker.

## PART 10

### FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

#### *Application*

**120.** For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

#### *Interpretation*

**121.** In this Part of this Schedule—

“acceptable insurance” means a third party liability insurance(s) effected and maintained by the undertaker and/or its contractors to a cumulative level of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance(s) must be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters such policy will include (but without limitation)—

- (a) Cadent as a Co-Insured;
- (b) a cross liabilities clause; and
- (c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with a cumulative cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

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

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“Cadent” means Cadent Gas Limited and/or its successors in title and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“commence” has the same meaning as in article 2 (interpretation) of the Order and commencement will be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement includes low risk works and the diversion or laying of services (excluding apparatus);

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

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“low risk works” means intrusive remediation works, intrusive environmental (including archaeological) surveys and investigations, intrusive site and soil survey, erection of fencing to site boundaries, or intrusive environmental mitigation measures which in each case does not take place more than 300mm below the surface of the ground.

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

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

“rights” includes rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 5 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 126(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 126(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (Cadent’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of Cadent High pressure Gas pipelines and associated installation requirements for third parties GD/SP/SSW/22”); and

“undertaker” means the undertaker as defined in article 2 of this Order.

### *On Street Apparatus*

**122.**—(1) Except for paragraphs 123 (apparatus in stopped up streets), 126 (removal of apparatus) in so far as sub-paragraph (2) applies, 127 (facilities and rights for alternative apparatus) in so far as sub-paragraph (2) applies, 128 (retained apparatus: protection), 129 (expenses) and 130 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Cadent, the other provisions of this Schedule do not apply to

apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraphs 126 and 127 of this Part of this Schedule will apply to diversions even where carried out under the 1991 Act, in circumstances where any Apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

(3) Notwithstanding article 29 (rights under or over streets) or any other powers in the Order generally, section 85 of the 1991 Act in relation to cost sharing and the regulations made thereunder will not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

#### *Apparatus of Cadent in stopped up streets*

**123.** Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary closure, alteration, diversion or restriction of streets and public rights of way), Cadent is be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect any apparatus which at the time of the stopping up or diversion was in that highway.

#### *Protective works to buildings*

**124.—**(1) The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), must—

- (a) pay compensation to Cadent for any loss sustained by it by reason or in consequence of such damage or interruption; and
- (b) indemnify Cadent against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent or its contractors or workmen.

(3) Cadent will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof is to be made by Cadent, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

#### *Acquisition of land*

**125.—**(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not appropriate or acquire any land interest or appropriate, acquire, or extinguish, materially interfere with or override any easement, other interest or right and/or apparatus of Cadent otherwise than by agreement (such agreement not to be unreasonably withheld or delayed) and provided that what amounts to a material

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

interference is to be determined by Cadent acting reasonably having regard to its statutory duties and obligations.

(2) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and/or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

(3) Any agreement or consent granted by Cadent under paragraph 128 or any other paragraph of this Part of this Schedule, will not be taken to constitute agreement under sub-paragraph (1).

(4) As a condition of an agreement between the parties in sub-paragraph (1) that involves de-commissioned apparatus being left in situ in any land of the undertaker, the undertaker must accept a surrender of any existing easement and/or other interest of Cadent in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(5) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 126 do not apply, the undertaker must—

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

#### *Removal of apparatus*

**126.**—(1) If, in the exercise of the powers conferred by this Order or under an agreement reached in accordance with paragraph 125 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Cadent's apparatus is relocated or diverted, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraph (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 requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section 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 Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its reasonable satisfaction (taking into account paragraph 127(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);

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

- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights within the order limits as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent may, 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 assist the undertaker in obtaining 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 or land secured by 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 Cadent and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 134 (arbitration) of this Part of this Schedule.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to Cadent to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

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

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's reasonable opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 134 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### *Retained apparatus: protection of Cadent*

**128.**—(1) Not less than 14 days before beginning any low risk works the undertaker must submit to Cadent a plan identifying the nature of the works and the planned interaction with apparatus and the undertaker will undertake those works in accordance with the requirements of sub-paragraph (12) of this paragraph and no work will be undertaken in the vicinity of the apparatus without the formal written consent of Cadent in accordance with paragraph 2 of Cadent's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of Cadent assets for third parties SSW22".

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

(2) Save where sub-paragraph (1) applies in respect of low risk works, not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(3) The plan to be submitted to Cadent under sub-paragraph (2) must 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 including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(4) The undertaker must not commence any works to which sub-paragraphs (2) and (3) apply until Cadent has given written approval of the plan so submitted.

(5) Any approval of Cadent required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs (2) and/or (3) apply, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and no less convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraphs (2) and (3) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with all conditions imposed under sub-paragraph (5)(a), and Cadent will be entitled to watch and inspect the execution of those works.

(8) Where Cadent reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's reasonable satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required prior to commencement.

(9) If Cadent, 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 120 to 122 and 125 to 127 apply as if the removal of the apparatus had been required by the undertaker under paragraph 126(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 14 days (in respect of low risk works) or otherwise 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

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

- (a) the conditions imposed under sub-paragraph (5)(a) insofar as is reasonably practicable in the circumstances; and



(b) sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of Cadent assets requirements for third parties SSW22” and HSE’s “HS(~G)47 Avoiding Danger from underground services”.

(13) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 129.

(14) The undertaker must not commence (and must not permit the commencement of) the authorised works or any intrusive environmental (including archaeological) surveys and investigation or intrusive site or soil survey, on any land owned by Cadent or in respect of which Cadent has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of Cadent’s apparatus unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Cadent that it will maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of the authorised works) and Cadent has confirmed the same in writing to the undertaker (such confirmation not to be unreasonably withheld or delayed).

#### *Expenses*

**129.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, following receipt of an invoice from Cadent all charges, costs and expenses reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including reasonable professional fees) incurred by Cadent as a consequence of Cadent;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 126(3) if it elects to do so; and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;
- (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 such works referred to in this Part of this Schedule; and
- (g) any watching brief pursuant to paragraph 128(7).

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

(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 and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (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 Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus will 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 will 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 Cadent 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 Cadent 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.

### *Indemnity*

**130.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and

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

(b) indemnify Cadent for any other reasonable expenses, loss, demands, proceedings, damages, claims, penalty (but not criminal penalties, unless such criminal penalties are directly attributable to the undertaker) or costs reasonably incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or wilful act or default of Cadent, its officers, servants, contractors or agents; and

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-paragraph 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 130.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the promoter and considering and discussing their representations and must keep the undertaker updated on the settlement negotiation and/or any litigation which may arise from it and take such action as the undertaker may reasonably request to avoid, dispute, compromise or defend the matter.

#### *Enactments and agreements*

**131.**—(1) Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

(2) Nothing in this Part of this Schedule will affect the provisions of an agreement dated 18 September 1985 between the undertaker (a) and (2) British Gas Corporation (2).

(3) The benefit and burden of that agreement on the part of British Gas Corporation now vests in Cadent, insofar as it affects Cadent’s 8 inch gas main referred to in the agreement.

#### *Co-operation*

**132.**—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under sub-paragraph 126(2) or (3) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 128 or Cadent is required to access its apparatus in stopped up streets under paragraph 123, the undertaker must use its best endeavours to co-ordinate the execution of the works—

(a) in the interests of safety;

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

- (b) taking into account the efficient and economic execution of the authorised development; and
- (c) taking into account the need to ensure the safe and efficient operation of Cadent's undertaking,

and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement, approval or expression of satisfaction is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

#### *Access*

**133.** If in consequence of the agreement reached in accordance with paragraph 125(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction and both parties must use their best endeavours to co-operate for that purpose.

#### *Arbitration*

**134.** Save for differences or disputes arising under paragraph 128 any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 48 (arbitration).

#### *Notices*

**135.** The plans submitted to Cadent by the undertaker pursuant to paragraph 128 must be sent to Cadent Gas Limited Plant Protection at Brick Kiln Street, Hinckley, Leicestershire LE10 0NA or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.