

SCHEDULES

SCHEDULE 13

Articles 35 and 58

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

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

2. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of a statutory undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989⁽¹⁾), belonging to or maintained by the statutory undertaker for the purposes of electricity supply;
- (b) in the case of a statutory undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by the statutory undertaker for the purposes of gas supply;
- (c) in the case of a statutory undertaker within paragraph (c) of the definition of that term—
 - (i) mains, pipes or other water apparatus belonging to or maintained by the statutory undertaker for the purposes of water supply; and
 - (ii) mains, pipes or other water apparatus that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991⁽²⁾; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991; 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⁽³⁾,

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

(1) 1989 c. 29.

(2) 1991 c. 56. Section 51A was inserted by section 92(1) of the Water Act 2003 (c. 37), and subsequently amended by section 10(1) and (2) of the Water Act 2014 (c. 21).

(3) Section 102(4) was amended by section 96(1)(c) to (e) and (3) of the Water Act 2003. Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003, section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to, the Water Act 2014.

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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; and

“statutory undertaker” means—

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986⁽⁴⁾;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

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

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by Part 3 (street works in England and Wales) of the 1991 Act.

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

(2) Where any street is stopped up under article 10 (permanent stopping up of streets and private means of access), any statutory undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the statutory undertaker legal easements reasonably satisfactory to the statutory undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the statutory undertaker to require the removal of that apparatus under paragraph 6 or to carry out works under paragraph 8.

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

6.—(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 over which access to any apparatus is enjoyed 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 a statutory undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the statutory undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of carrying out 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 statutory 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

(4) 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) and Part 1 of Schedule 23 to the Energy Act 2004 (c. 20). There are further amendments to section 7 but none are relevant.

of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (a), afford to the statutory 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.

(a) 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 statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(3) The obligation imposed on the statutory undertaker under sub-paragraph (2)(a) does not extend to the exercise by the statutory undertaker of any power to acquire any land or rights in land by compulsory purchase order.

(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 statutory undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 62 (arbitration).

(5) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 62 (arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (2)(a), 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 statutory undertaker in question that it desires itself to carry out any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being carried out by the statutory undertaker, may be carried out by the undertaker, with the prior written consent of the statutory undertaker (which must not be unreasonably withheld or delayed and is to be subject to any such conditions as are reasonable and proper to protect the apparatus) in accordance with plans and in a position agreed between the statutory undertaker and the undertaker or, in default of agreement, determined by arbitration in accordance with article 62 (arbitration), without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(7) In carrying out any work under sub-paragraph (6) the undertaker must comply with all statutory obligations which would have been applicable had the works been carried out by the statutory undertaker.

(8) Nothing in sub-paragraph (6) authorises the undertaker to carry out the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or carry out any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a statutory 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 must be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 62 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in land of the undertaker, the arbitrator must—

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- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the new bridge and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to any apparatus constructed in, under, over or above the new bridge area for which the alternative apparatus is to be substituted.

(3) 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 statutory 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 statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the carrying out of any works authorised by this Order that will or may affect any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or 6(6), the undertaker must submit to the statutory undertaker in question a plan, section and description of the works to be carried out.

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

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

(4) If a statutory undertaker in accordance with sub-paragraphs (2) and (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 4 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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 carrying out of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) Nothing in sub-paragraph (6) entitles the undertaker to carry out works to any apparatus but, upon receipt of notice from the undertaker, the statutory undertaker must proceed to carry out such works as may be required without unnecessary delay.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker in question the proper and reasonable expenses incurred by that statutory undertaker in, or in connection with the inspection, removal, relaying, replacing, alteration or protection of any apparatus under any provision of this Part of this Schedule (including any costs

reasonably incurred or compensation properly paid in connection with the acquisition of facilities and rights or exercise of statutory powers for such apparatus) including the cutting off of any apparatus from any other apparatus or the making safe of any redundant apparatus as a consequence of the exercise by the undertaker of any power under this Order and the surveying of any land or works, the inspection, superintendence and monitoring of works or the removal of any temporary works reasonably necessary in consequence of the exercise of the undertaker of any power under this Order.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 62 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

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

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker in question any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) indemnify the statutory undertaker against all reasonable claims, penalties, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or reasonably and properly incurred by, the statutory undertaker,

by reason or in consequence of any such damage or interruption.

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(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 a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory 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 which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to that apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before the obstruction.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Company and the operator.

(2) In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003⁽⁵⁾;

“electronic communications apparatus” has the same meaning as in the electronic communications code⁽⁶⁾;

“the electronic communications code” has the same meaning as in section 106 (1) (application of the electronic communications code) of the 2003 Act⁽⁷⁾;

“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 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

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

“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.

13. The exercise of the powers of article 35 (statutory undertakers and utilities) is subject to Part 10 undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

14.—(1) Subject to sub-paragraphs (2) to (3), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(5) 2003 c. 21.

(6) See paragraph 5 of Schedule 3A (the electronic communications code) to the Communications Act 2003 (c. 21). Schedule 3A was inserted by Schedule 1 to the Digital Economy Act 2017 (c. 30).

(7) Section 106 was amended by section 104(3) to (9) of the Digital Economy Act 2017.

- (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 which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

15. 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 62 (arbitration).

16. 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 damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

PART 3

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

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

18. In this Part of this Schedule—

“the Agency” means the Environment Agency;

“completion” in relation to a specified work means the date on which it is brought into use;

“construction” includes execution, placing, altering, replacing, relaying, removal and excavation and “construct” and “constructed” have corresponding meanings;

“drainage work” includes any land which provides or is expected to provide flood storage capacity for Lake Lothing 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 Lake Lothing;

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

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

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

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- (b) affect the flow, purity or quality of water in Lake Lothing and any other watercourse or other surface waters or ground water;
 - (c) cause obstruction to the free passage of fish or damage to the fishery;
 - (d) affect the conservation, distribution or use of water resources; or
 - (e) affect the conservation value of Lake Lothing and habitats in its immediate vicinity; and
- “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

19.—(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 30.

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

- (a) must not be unreasonably withheld or delayed;
- (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; and
- (c) may be given subject to such reasonable requirements as the Agency may have 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 and recreational 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).

(5) Without limiting sub-paragraph (3), 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—

- (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.

(6) Any specified work, and all protective works required by the Agency under sub-paragraph (4) must be constructed—

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

and the Agency is entitled by its officers to watch and inspect the construction of such works.

(7) 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.

20. The undertaker must give to the Agency notice in writing of the commencement of any specified work not less than 14 days prior to its commencement and notice in writing of its completion not later than 7 days after such completion.

21.—(1) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work to the reasonable satisfaction of the Agency, 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.

(2) Subject to sub-paragraph (3) if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (1) 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 incurred by the Agency in so doing is recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which a 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 an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 30.

22.—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

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

(3) Subject to sub-paragraph (5) and paragraph 26, 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 is to be recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with this Part of this Schedule the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker 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 30.

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

23. Subject to paragraph 26, if by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

24. 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 undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 48 hours of the undertaker becoming aware of such obstruction.

25.—(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 undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 26, 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 the fishery, the undertaker fails to take such steps as are described in a notice served pursuant to subparagraph (1), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) Subject to paragraph 26, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to a fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expense incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice

26.—(1) The undertaker must indemnify the Agency in respect of all reasonable costs, charges and expenses which the Agency may incur—

- (a) in the examination or approval of plans under this Part of this Schedule; or
- (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.

27.—(1) The undertaker is responsible for and must indemnify the Agency against all costs and losses not otherwise provided for in this Part of this Schedule which may be incurred or suffered by the Agency by reason of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or

- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.
- (2) In sub-paragraph (1), “costs” include—
 - (a) expenses and charges;
 - (b) staff costs and overheads; and
 - (c) legal costs.
- (3) The undertaker must indemnify the Agency against all liabilities, claims and demands arising out of or in connection with the authorised development or works otherwise outside of the matters referred to in sub-paragraphs (1)(a) and (1)(b).
- (4) In sub-paragraph (3)—
 - (a) “claims” and “demands” include as applicable—
 - (i) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand; and
 - (ii) any interest element of sums claimed or demanded; and
 - (b) “liabilities” include—
 - (i) contractual liabilities;
 - (ii) tortious liabilities (including liabilities for negligence or nuisance);
 - (iii) liabilities to pay statutory compensation or for breach of statutory duty; and
 - (iv) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

28. The Agency must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof is to be made without the agreement of the undertaker which agreement must not be unreasonably withheld.

29. 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 does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

30. Any difference or dispute arising between the Agency and the undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the Agency and the undertaker, be determined by arbitration in accordance with article 62 (arbitration).

PART 4

FOR THE PROTECTION OF RAILWAY INTERESTS

31. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail, and in the case of paragraph 45, any other person on whom rights or obligations are conferred by that paragraph.

32. In this Part of this Schedule—

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

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

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

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 (licences) of the Railways Act 1993⁽⁸⁾;

“Network Rail” means Network Rail Infrastructure Limited (company number 0204587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) 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 (meaning of “subsidiary” etc) of the Companies Act 2006⁽⁹⁾) 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;

“protective works” means any works specified by the engineer under paragraph 35⁽⁴⁾;

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

“railway property” means any railway belonging to Network Rail and—

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

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

33.—(1) Where under this Part of this Schedule 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 or rights over 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 under this Order.

34.—(1) The undertaker must not exercise the powers conferred by articles 4 (development consent etc granted by the Order), 10 (permanent stopping up of private means of access), 11 (temporary stopping up and restriction of use of streets), 12 (access to works) 14 (use of private roads for construction), 15 (discharge of water), 16 (protective works to buildings), 17 (authority to survey and investigate land) 18 (felling or lopping of trees), 19 (trees subject to tree preservation orders), 22 (compulsory acquisition of land), 26 (compulsory acquisition of rights, etc), 27 (acquisition of

⁽⁸⁾ 1993 c. 43. As amended by paragraphs 1 and 4 of Schedule 17 to the Transport Act 2000 (c. 38), paragraphs 1 and 5 of Schedule 2 to the Railways and Transport Safety Act 2003 (c. 20), paragraph 3 of Schedule 1, and Schedule 13, to the Railways Act 2005 (c. 14) and S.I. 2015/1682.

⁽⁹⁾ 2006 c. 46.

subsoil and airspace only), 28 (private rights over land), 29 (power to override easements and other rights), 30 (rights over or under streets), 33 (temporary use of land for carrying out the authorised development), 34 (temporary use of land for maintaining the authorised development), 35 (statutory undertakers and utilities), 36 (apparatus and rights of statutory undertakers and utilities in stopped up streets), 43 (maintenance of authorised development) and 44 (subsidiary works and operations in Lake Lothing) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or the 1981 Act as applied or modified by this Order 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 (extinguishment of rights of statutory undertakers: preliminary notices) or 272(10) (extinguishment of rights of electronic communications code operators: preliminary notices) of the 1990 Act or article 35 (statutory undertakers and utilities) 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 any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

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

(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 disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is to be 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 without unnecessary delay 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 his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion must be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using those railways (including any relocation, decommissioning 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

(10) Section 272 was amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

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 without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

36.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 35(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 35;
- (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 on it 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 or a protective work, the undertaker must, regardless 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 of this Schedule 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 to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

37. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work or a protective 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 a protective work or the method of constructing it.

38. 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 of this Schedule 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.

39.—(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 a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railways 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 or a protective work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work or the protective 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 or protective is to be constructed, Network Rail must assume construction of that part of the specified work or the protective work and the undertaker must, regardless of any such approval of a specified work or the protective work under paragraph 35(2) 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 or protective work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 40(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 such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

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

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 35(3) or in constructing any protective works under the provisions of paragraph 35(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 or a protective work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers 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 or a protective work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or a protective work or from the substitution of 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 or a protective work.

41.—(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 35(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

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

- (4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—
- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 35(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 under to sub-paragraph (a); and
 - (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified under to sub-paragraph (a).
- (5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold 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 39(1) has effect subject to this sub-paragraph.
- (6) If at any time prior to the completion of the authorised development and regardless of any measures adopted under 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 such 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) cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such 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 such EMI;
 - (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such 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 such EMI.
- (8) Where Network Rail approves modifications to Network Rail's apparatus under 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; and
 - (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 36.
- (9) To the extent that it would not otherwise do so, the indemnity in paragraph 45(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 40(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 62 (arbitration) to the Institution of Civil Engineers is to be read as a reference to the Institution of Engineering and Technology.

42. If at any time after the completion of a specified work or a protective 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 or the protective 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 or that protective work in such state of maintenance as not adversely to affect railway property.

43. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective 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.

44. 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 or a protective work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

45.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or a protective work or the failure thereof; or
- (b) by reason of 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 or a protective 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 a protective 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 his supervision must 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 the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand must be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) must include sums 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.

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

(6) In this paragraph—

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

“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 protective work or any such act or omission as mentioned in subparagraph (1); and

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

46. 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 of this Schedule (including the amount of the relevant costs mentioned in paragraph 45) 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 under this Part of this Schedule (including any claim relating to those relevant costs).

47. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account 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 of this Schedule or increasing the sums so payable.

48. 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 the 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.

49. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993.

50. 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 49 (transfer of benefit of Order, etc.) 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.

51. The undertaker must no later than 28 days from the date that the documents submitted to and certified by the Secretary of State in accordance with article 60 (certification of documents) are certified by the Secretary of State, provide a set of those documents to Network Rail in the form of a computer disc with read only memory.

52. In relation to any dispute arising under this Part of this Schedule that is referred to arbitration in accordance with article 62 (arbitration), the process referred to in article 62(2) must be varied by the arbitrator where Network Rail demonstrates to the arbitrator’s reasonable satisfaction that Network Rail is unable (acting reasonably) to comply with the process due to timing constraints that may arise for Network Rail in—

- (a) obtaining clearance conditions;

- (b) obtaining any engineering, regulatory or stakeholder (internal or external) consent; or
- (c) assessing any matter of concern with regard to the safe operation of Network Rail's railway,

the variation being to the extent reasonably necessary so that Network Rail is able (acting reasonably) to comply with that process.

PART 5

FOR THE PROTECTION OF THE HARBOUR AUTHORITY

53. For the protection of the harbour authority the provisions of this Part of this Schedule, have effect unless otherwise agreed in writing.

54. In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material (including any materials used to construct the authorised development) which constitutes an impediment to navigation at or in the approaches to Lowestoft Harbour;

“erosion” means any erosion of the bed or banks of the lake or any quay or jetty or other structure of whatever nature within Lowestoft Harbour;

“plans” includes sections, descriptions, drawings, specifications, proposed method statements and hydraulic information, including but not limited to information as to the discharge of water and materials;

“port land” means any land in Lowestoft Harbour held by the harbour authority for the purposes of its statutory undertaking; and

“specified work” means any tidal work or any other work or operation authorised by this Order on port land or which may affect port land or navigation in respect of Lowestoft Harbour of the functions or the harbour authority in relation to the operation of Lowestoft Harbour.

55.—(1) The undertaker must not, under the powers conferred by this Order, temporarily possess, acquire or use, or acquire new rights over, port land without the consent of the harbour authority.

(2) The undertaker must not exercise the powers conferred by article 17 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act in respect of any port land without the consent of the harbour authority.

(3) The powers conferred by article 29 (power to override easements and other rights) do not apply to any rights held by the harbour authority for the purpose of its statutory undertaking, except with the consent of the harbour authority.

(4) The consent of the harbour authority under this paragraph must not be unreasonably withheld but may be given subject to reasonable conditions.

(5) If the harbour authority fails to express its refusal or approval of any request for a consent under—

- (a) sub-paragraph (1) in respect of temporary possession powers;
- (b) sub-paragraph (2); or
- (c) sub-paragraph (3),

within 30 days of such a request having been delivered to it, and the harbour authority has not requested an extension of time to give its consent from the undertaker prior to the expiration of the 30 days which the undertaker has granted, acting reasonably, such a request is deemed to have been refused by the harbour authority.

(6) If the harbour authority fails to express its approval of any request for a consent under sub-paragraph (1), (2) or (3) at the expiration of the extension of time granted by the undertaker under sub-paragraph (5), such a request is deemed to have been refused by the harbour authority.

56.—(1) At least 56 days before commencing the construction or maintenance of any specified work, the undertaker must submit to the harbour authority plans of that work for its approval.

(2) Any approval of the harbour authority under this paragraph—

- (a) must not be unreasonably withheld;
- (b) may be given subject to such reasonable requirements as the harbour authority may make for the protection of Lowestoft Harbour and navigation within Lowestoft Harbour and the approaches to Lowestoft Harbour, including a requirement for the undertaker to carry out protective works at its own expense; and
- (c) must not restrict the powers granted to the undertaker under this Order where such powers do not affect the harbour authority's undertaking.

(3) The undertaker must carry out any specified work and any protective works required under sub-paragraph (2)(b) in accordance with the plans approved under sub-paragraph (1) or settled under article 62 (arbitration).

(4) If the harbour authority fails to express its refusal or approval of any plans or arrangements within 30 days after they have been delivered to it under sub-paragraph (1) and the harbour authority has not requested an extension of time to give its consent from the undertaker prior to the expiration of the 30 days which the undertaker has granted, acting reasonably, it is deemed to have refused them.

(5) If the harbour authority fails to express its approval of any plans or arrangements delivered to it under sub-paragraph (1) at the expiration of the extension of time granted by the undertaker under sub-paragraph (4), such a request is deemed to have been refused by the harbour authority.

57. The undertaker must at all reasonable times during construction of a specified work allow the harbour authority, its servants and agents, access to such work and all reasonable facilities for inspection of any such work subject always to the reasonable stipulations of the undertaker relating to delay to construction, health, safety, security and confidentiality.

58.—(1) After the purpose of any temporary works has been accomplished the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from the harbour authority requiring the undertaker so to do, remove any such temporary works or any materials relating to them which may have been placed on port land or below the level of high water within Lowestoft Harbour or the approaches to Lowestoft Harbour by or on behalf of the undertaker, and make good the land upon which the temporary works took place to the reasonable satisfaction of the harbour authority.

(2) If the undertaker fails to do so within a reasonable period after receiving such notice, the harbour authority may remove the same and may recover the reasonable costs of doing so from the undertaker.

59.—(1) If during the construction of a tidal work or after the completion of that work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion the undertaker, if so requested by the harbour authority acting reasonably, must remedy such accumulation or erosion to the extent attributable to such construction and, if it refuses or fails to do so as soon as reasonably practicable, the harbour authority may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) For the purposes of sub-paragraph (1)—

- (a) in the case of an accumulation, the remedy must be its removal; and

(b) in the case of erosion, the remedy must be the carrying out of such reconstruction works and other protective works or measures as the harbour authority reasonably requires.

(3) In the event that surveys, inspection, tests and sampling carried out pursuant to paragraph 64(1)(b) establish that such accumulation or erosion would have been caused in any event by factors other than construction of a tidal work, the undertaker is liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction.

60. The undertaker must pay to the harbour authority the reasonable costs of—

- (a) alterations to aids to navigation (including navigation marks or lights) owned by the harbour authority;
- (b) laying down moorings or buoys; or
- (c) carrying out any dredging operations in relation to sub-paragraphs (a) and (b),

as may be necessary in consequence of the construction of a tidal work.

61. The undertaker must, at or near a specified work, exhibit such lights, lay down such buoys, display such navigational markings and take such other steps for preventing danger to navigation as the harbour authority may from time to time reasonably require.

62. The undertaker must comply with any reasonable directions issued from time to time by the harbour master with regard to the lighting of a specified work or the screening of such lighting so as to ensure that it is not a hazard to navigation in Lowestoft Harbour.

63.—(1) If any tidal work of which the undertaker is in possession in exercise of any of the powers conferred by this Order is abandoned or falls into decay, insofar as it affects or otherwise impacts upon the operation of Lowestoft Harbour or navigation in the approaches to Lowestoft Harbour, the harbour authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as the harbour authority may reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation, the harbour authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the undertaker so elects, to remove the tidal work and (to such extent as the harbour authority reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning to take such steps has failed to make reasonably expeditious progress towards effecting compliance with the requirements of the notice, the harbour authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

(4) In the event of a difference or dispute between the undertaker and the harbour authority as to the necessity of any steps or works specified in a notice by the harbour authority under this paragraph, such difference or dispute must be determined by arbitration in accordance with article 62 (arbitration).

64.—(1) Without limiting the other provisions of this Part, the undertaker is to be responsible for, and must make good to the harbour authority, all losses, costs, charges, damages and expenses however caused which may reasonably be incurred by or occasioned to the harbour authority by reason of or arising from or in connection with—

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- (a) the perusal of plans and navigation schemes and the inspection of a specified work by the harbour authority or its duly authorised representative;
 - (b) the carrying out of surveys, inspections, tests and sampling within Lowestoft Harbour and the approaches to Lowestoft Harbour—
 - (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of Lowestoft Harbour as the harbour authority has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the undertaker is liable to remedy under paragraph 59; and
 - (ii) where the harbour authority has reasonable cause to believe that the construction of any of the tidal works is causing or has caused any such accumulation or erosion;
 - (c) any update of the navigation risk assessment relating to Lowestoft Harbour in consequence of paragraph 11(4) (navigation risk assessment) of Schedule 2 to the extent that it is required as a consequence of any variation to, or replacement of, the Scheme of Operation proposed by the undertaker or the harbour authority under article 41 (operation of the new bridge) or as a result of the operation of the new bridge generally;
 - (d) any variation to or replacement of the Scheme of Operation proposed by the undertaker or harbour authority under article 41;
 - (e) the harbour authority responding to a request for consultation, agreement, approval or consent pursuant to any provision of this Order;
 - (f) the construction, maintenance or failure of a specified work, or the undertaking by the harbour authority of works or measures to prevent or remedy danger or impediment to navigation, or damage to port land arising from such construction, maintenance or failure, including but not limited to—
 - (i) any additional costs of dredging incurred by the harbour authority as a result of contamination of the lakebed caused by the construction or maintenance of the specified work;
 - (ii) damage to any plant or equipment belonging to the harbour authority and located on port land, or to any port land or building on port land, that is caused by the construction, maintenance or failure of a specified work; and
 - (iii) the failure of the new bridge to open fully; and
 - (g) any act or omission of the undertaker or its servants or agents whilst engaged in the construction or maintenance of a specified work or in the act of operating the opening mechanism of the new bridge to enable it to open fully, save where such acts or omissions are undertaken by the harbour authority.
- (2) Without limiting the generality of sub-paragraph (1), the undertaker must indemnify the harbour authority from and against all claims and demands arising out of, or in connection with, such construction, maintenance or failure or act or omission as is mentioned in that sub-paragraph.
- (3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (2) are attributable to negligence on the part of the harbour authority or of any person in its employ or of its contractors or agents, including negligence in the course of operating the opening mechanism of the new bridge.
- (4) The harbour authority must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.
- 65.** The fact that any work or thing has been executed or done with the consent of the harbour authority and in accordance with any conditions or restrictions prescribed by the harbour authority or in accordance with any plans approved or deemed to be approved by the harbour authority or to

its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under the provisions of this Part.

66. Save to the extent expressly provided for nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, the harbour authority or the harbour master at the date of this Order coming into force.

67. With the exception of any duty owed by the harbour authority to the undertaker, nothing in this Order is to be construed as imposing upon the harbour authority any duty or liability to which the harbour authority would not otherwise be subject.

68. Any difference or dispute arising under this Part must, unless otherwise agreed in writing between the undertaker and the harbour authority, be determined by arbitration in accordance with article 62 (arbitration).

PART 6

FOR THE PROTECTION OF ANGLIAN WATER

69. The following provisions of this Part of this Schedule have effect for the protection of Anglian Water unless otherwise agreed in writing between the undertaker and Anglian Water.

70. In this Part of this Schedule—

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

“apparatus” means—

- (a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991; and
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(**11**) (adoption of sewers and disposal works) of the Water Industry Act 1991 or an agreement to adopt made under section 104(**12**) (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act,

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

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

71. The undertaker must not interfere with, build over or near to any apparatus within the Order land or carry out the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or carry out any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus—

(11) Section 102(4) was amended by section 96(1) of the Water Act 2003 (c. 37) and paragraphs 2 and 90 of Schedule 7 to the Water Act 2014 (c. 21).

(12) Section 104 was amended by section 96(1) of, and Part 3 of Schedule 9 to, the Water Act 2003, section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of the Water Act 2014.

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- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres,

unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

72. The alteration, extension, removal or re-location of any apparatus must not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016(13) or other legislation and any other associated consents are obtained by the undertaker, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be carried out only in accordance with the plan and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

73. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, an alteration or extension must not take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

74. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement with Anglian Water, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 62 (arbitration).

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

76. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets must immediately be given to Anglian Water and afforded the same protection as other Anglian Water assets.

77. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 72 to 74 and 76 above any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

(13) S.I. 2016/1154.

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

PART 7

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

78. For the protection of Cadent, the provisions in this Part of this Schedule have effect, unless otherwise agreed in writing between the Cadent and the undertaker.

Interpretation

79. In this Part of this Schedule—

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

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by 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 or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of the Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development;

“commence” has the same meaning as in article 2 of the Order and “commencement” is to be construed accordingly, and for the purpose of this Part of this Schedule only includes any below ground surveys, monitoring or operations or receipt and erection of construction plant within 15 meters of any apparatus;

“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 or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are 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 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, requires 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;

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“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” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent 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 constructed; and

“specified works” means any part of the authorised development which—

- (a) is 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 84(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 84(2) or otherwise; or
- (c) includes any activity that is 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 National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

On Street Apparatus

80.—(1) Except for paragraphs 81, 86, 87 and 88, which apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Cadent, and paragraphs 84 and 85 insofar as sub-paragraph (2) applies, the other provisions of this Part 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 (street works in England and Wales) of the 1991 Act.

(2) Paragraphs 84 and 85 of this Part of this Schedule apply to diversions even if the 1991 Act is applicable, in circumstances where any apparatus is diverted from its current alignment, but is not wholly replaced within the existing adopted public highway.

Apparatus of Cadent in stopped up streets

81.—(1) Without prejudice to the generality of any other protection afforded to Cadent elsewhere in the Order, where any street is stopped up under article 10 (permanent stopping up of streets and private means of access), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or must procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary stopping up and restriction of use of streets), Cadent is at liberty at all times to take all necessary access across any such stopped up highway or 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.

(3) The provisions of this Part of this Schedule apply and take precedence over article 36 (apparatus and rights of statutory undertakers and utilities in stopped up streets).

Protective works to buildings

82. The undertaker, in the case of the powers conferred by article 16 (protective works 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.

Acquisition of land

83.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker may not, except with the agreement of Cadent—

- (a) acquire any interest in or right over land, or any apparatus belonging to Cadent;
- (b) override any easement or other interest of Cadent by the imposition of restrictive covenants or otherwise; or
- (c) appropriate or use the subsoil of any street which contains the apparatus of Cadent.

(2) Prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that causes any conflict with or breach the terms of any existing easement or other legal or land interest of Cadent or affects the provisions of any existing enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it must be the responsibility of the undertaker to procure or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such part of the authorised development.

(3) 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 or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 86 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

84.—(1) If, in the exercise of the agreement reached in accordance with paragraph 83 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of Cadent 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 Cadent in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of constructing any part of the authorised development 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 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 remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Cadent to its satisfaction (taking into account paragraph 85(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus; and

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(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, 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, Cadent must, on receipt of a written notice to that effect from the undertaker, take such reasonable steps to seek to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, with the undertaker's assistance if required by Cadent, save that this obligation does not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless 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 Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to Cadent of any such facilities and rights as are referred to in sub-paragraph (2) or (3), then 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

85.—(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 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 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 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 removed the terms and conditions to which those facilities and rights are subject in the matter may be referred to arbitration in accordance with paragraph 92 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

86.—(1) Not less than 56 days (or such time period as may be agreed between Cadent and the undertaker) before the commencement of any specified works the undertaker must submit to Cadent a plan or plans and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan or plans to be submitted to Cadent under sub-paragraph (1) must include a method statement which describes—

- (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.
- (3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Cadent has given written approval of the plan so submitted.
- (4) Any approval of Cadent required under sub-paragraph (2)—
 - (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
 - (b) must not be unreasonably withheld.
- (5) In relation to any work to which sub-paragraph (1) or (2) applies, Cadent 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 convenient means of access to any apparatus.
- (6) 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 (4), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by Cadent for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Cadent is entitled to watch and inspect the execution of those works.
- (7) Where Cadent 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 satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and Cadent must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (8) If Cadent in accordance with sub-paragraph (5) or (7) 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 78 to 80 and 83 to 85 apply as if the removal of the apparatus had been required by the undertaker under paragraph 84(2).
- (9) 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 unless otherwise agreed by Cadent and the undertaker 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 apply to and in respect of the new plan.
- (10) 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—
 - (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
 - (b) comply with sub-paragraph (11) at all times.
- (11) At all times when carrying out any part of the authorised development the undertaker must comply with Cadent's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".
- (12) As soon as reasonably practicable after any ground subsidence event, identified in the light of monitoring required in sub-paragraph (1) or which otherwise becomes apparent, 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 87.

Expenses

87.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on reasonable demand all charges, costs and expenses reasonably anticipated or 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 alternative apparatus which may be required in consequence of the execution of any part of the authorised development as is 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 acquisition of rights or the exercise of statutory powers for alternative apparatus including without limitation all costs incurred by Cadent as a consequence of Cadent—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 84(3); 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, plus a capitalised sum to cover the cost of maintaining and renewing permanent 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.

(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 92 to be necessary, then, if such placing involves cost in the construction of works to apparatus or alternative apparatus 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) must 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 due either to unavailability of a like for like replacement or as a result of changes in policy or regulations rendering the original apparatus inappropriate, unacceptable or obsolete, in which case full costs must 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 the existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus,
 - (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six 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, be reduced by the amount that represents that benefit.

Indemnity

88.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works to apparatus or alternative apparatus authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, 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 must—

- (a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or the undertaker becoming liable to any third party as aforesaid other than arising from any omission, negligence or 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 must not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

- (3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—
- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
 - (b) any part of the authorised development 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 (benefit of order granting development consent) of the 2008 Act or article 49 (transfer of benefit of order, etc.) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this paragraph (b) are subject to the full terms of this Part of this Schedule including this paragraph.

(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 undertaker and considering its representations.

Enactments and agreements

89. 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 affects 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.

Co-operation

90.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 84(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 86, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) Whenever Cadent's consent, agreement or approval 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

91. If in consequence of the agreement reached in accordance with paragraph 83(1) or the powers granted under this Order the access to any 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.

Arbitration

92. 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 62 (arbitration).