

SCHEDULES

SCHEDULE 6

PROTECTIVE PROVISIONS

PART 4

FOR THE PROTECTION OF SOUTH EASTERN POWER NETWORKS PLC

31. For the protection of South Eastern Power Networks plc, the following provisions have effect, unless otherwise agreed in writing between the undertaker and South Eastern Power Networks plc.

32. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker to fulfil its statutory functions in a manner no less efficiently as is achievable using the apparatus which the alternative apparatus is to replace;

“apparatus” means electric lines and electrical plant (as defined in section 64(1) of the Electricity Act 1989) belonging to or maintained by the utility undertaker;

“functions” includes powers and duties;

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

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

“undertaker” means Network Rail Infrastructure Limited (Company Number 0294587) whose registered office is at 1 Eversholt Street, London NW1 2DN; and

“utility undertaker” means South Eastern Power Networks plc.

On street apparatus

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

Acquisition of land

34. Regardless of any provisions in this Order or anything shown on the land plan or contained in the book of reference to the Order, the undertaker must not acquire any land interest or any apparatus or otherwise override any easement and/or other interest of the utility undertaker otherwise than by agreement, such agreement not to be unreasonably withheld or delayed.

Removal of apparatus

35.—(1) If, in the exercise of the agreement reached in accordance with paragraph 34 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is

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placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of the utility undertaker to maintain or use that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in accordance with sub-paragraphs (2) to (7).

(2) If for the purpose of executing any works in, on or under any land purchased or acquired, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the utility undertaker at least 56 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker to its reasonable satisfaction (taking into account paragraph 36(1)) the necessary facilities and rights for the construction of alternative apparatus in other land and subsequently for the maintenance and use of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours 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 reasonably required by the utility undertaker, save that this obligation does not extend to the requirement for the utility undertaker to use its powers of compulsory acquisition.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker and the undertaker or in default of agreement settled by arbitration in accordance with article 20 (arbitration).

(5) The utility undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 20, and subject to the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed and as soon as reasonably practicable to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, and the utility undertaker consents in writing to the execution of that work (such consent not to be unreasonably withheld), that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker, which shall include compliance by the undertaker with all relevant statutory requirements and the utility undertaker's specifications and requirements relating to the execution of that work (and the utility undertaker shall be entitled to inspect such works to verify that they have been carried out in accordance with such requirements and specifications). At all times when carrying out any authorised works, the undertaker must comply with the utility undertaker's policies for development near overhead lines and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

(7) If the undertaker gives notice in writing to the utility undertaker in accordance with sub-paragraph (6) and the utility undertaker does not respond to the notice within 56 days of receipt to confirm whether it consents to the execution of that work by the undertaker, the utility undertaker shall be deemed to have granted consent, subject to the superintendence of that work by the utility

undertaker, if given, and to the works being carried out to the reasonable satisfaction of the utility undertaker, which shall include compliance by the undertaker with all relevant statutory requirements relating to the execution of that work.

(8) Nothing in sub-paragraphs (6) or (7) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, within 1 metre of other apparatus which does not form part of those works.

Facilities and rights for alternative apparatus

36.—(1) Where in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures the utility undertaker facilities and rights for the construction, use and maintenance and protection in land of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be no less favourable on the whole to the utility undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, unless otherwise agreed by the utility undertaker or in default of agreement settled by arbitration in accordance with article 20 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker and agreed with the utility undertaker under sub-paragraph (1) in respect of any alternative apparatus are less favourable on the whole to the utility undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with article 20 (arbitration) of the Order and the arbitrator may make such provision for the payment of compensation by the undertaker to the utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph article 20 (arbitration) of the Order shall apply.

Retained apparatus

37.—(1) Not less than 56 days before commencement of any authorised works that are in, on or under any land purchased, held, appropriated or used under this Order that may affect, or is within 15 metres of, any apparatus the removal of which has not been required by the undertaker under paragraph 35(2), the undertaker must submit to the utility undertaker a plan of the works to be executed.

(2) In relation to works which will or may—

(a) be situated on, over, under or within 15 metres, measured in any direction of any apparatus;
or

(b) involve embankment works within 15 metres of any apparatus,

the plan to be submitted to the utility undertaker must include a method statement describing—

(a) the proposed 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 and positioning of plant;

(d) the position of all apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

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

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- (a) the details of any cable trench design, including route, dimensions and clearance to pylons foundations;
 - (b) a demonstration that pylon foundations will not be affected prior to, during and post construction;
 - (c) the details of load bearing capacities of trenches;
 - (d) the details of cable installation methodology, including access arrangements, jointing bays and backfill methodology;
 - (e) written details of the operations and maintenance regime for the cable, including frequency and method access; and
 - (f) evidence that the trench bearing capacity is capable of taking the weight of the overhead line.
- (4) The undertaker must not commence any works to which sub-paragraphs (1), (2) and (3) apply until the utility undertaker has given written approval of the plan submitted.
- (5) Any approval of the utility undertaker required under sub-paragraph (2) or (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8);
 - (b) is deemed to have been given if it is neither given nor refused within 56 days of the submission of the plan for approval, and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
 - (c) must not be unreasonably withheld or delayed.
- (6) Where the utility undertaker reasonably requires any protective works to be carried out by itself or the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved, pursuant to this paragraph, must be carried out to the utility undertaker's reasonable satisfaction, prior to the commencement of any authorised works (or any relevant part thereof) to which sub-paragraph (1) applies and the utility undertaker shall give notice of the need for such protective works within 56 days from the date of receipt of a plan pursuant to sub-paragraph (1) (except in an emergency where no such notice will be required).
- (7) If the utility undertaker, in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 35(2) provided always that the utility undertaker may require, following review of the information provided, the undertaker to enter into an asset protection agreement in a form required by the utility undertaker acting reasonably.
- (8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any authorised works to which sub-paragraph (1) applies, a new plan, instead of the plan previously submitted, and having done so, the provisions of this paragraph shall apply to and in respect of the new plan.
- (9) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the utility undertaker notice as soon as is reasonably practicable and a plan of those works and must—
- (a) comply with sub-paragraphs (6), (7) and (8) in so far as is reasonably practicable in the circumstances; and
 - (b) comply with sub-paragraph (2) at all times.

Expenses and costs

38.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to the utility undertaker on demand all charges, costs and expenses reasonably and properly incurred by the utility undertaker in, or in connection with—

- (a) the inspection, removal, alteration, relaying, replacing or protection of any apparatus or the construction of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in any of these provisions including without limitation—
 - (i) any costs reasonably and properly incurred by or compensation paid by the utility undertaker in connection with the acquisition of facilities and rights or the exercise of statutory powers for any such apparatus in consequence of the operation of any of these provisions;
 - (ii) the cost of the carrying out of any necessary diversion work or the provision of any alternative apparatus; and
 - (iii) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus, in consequence of the exercise of any power conferred by this Order affecting the utility undertaker’s apparatus;
- (b) the survey of any land, apparatus or works, the superintendence and monitoring of works and the installation or removal of any temporary works reasonably necessary in consequence of the exercise of any power conferred by this Order affecting the utility undertaker’s apparatus;
- (c) the approval of plans;
- (d) the carrying out of protective works plus a proportionate capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (e) the survey of any land, apparatus or work, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule; and
- (f) any other work or thing rendered reasonably necessary in consequence of the exercise of any power conferred by this Order affecting the utility undertaker’s apparatus.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 20 (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 will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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- (4) For the purposes of sub-paragraph (3)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
 - (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

Compensation

39.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in any of these provisions or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default by the undertaker (or any person authorised by the undertaker) in the course of carrying out the works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the utility undertaker, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by the utility undertaker in making good such damage or restoring the supply;
- (b) make reasonable compensation to the utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker; and
- (c) compensate the utility undertaker against all losses, claims, demands, proceedings, costs, damages, penalty and expenses which may be made or taken against or recovered from or incurred by, the utility undertaker,

by reason or in consequence of any such damage or interruption or the utility undertaker becoming liable to any third party.

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

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

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

(5) The utility undertaker must use its reasonable endeavours to mitigate and minimise any costs, expenses, loss, demands and penalties to which the compensation under sub-paragraph (1) applies. If requested to do so by the undertaker, the utility undertaker shall provide an explanation of how the claim has been minimised.

Co-operation

40.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or the utility undertaker requires the removal of apparatus under paragraph 35(2) or the utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 37(6), the undertaker must use its best reasonable endeavours to co-ordinate the execution of the authorised works efficiently and in the interests of safety and taking into

account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and the utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the utility undertaker'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.

Enactments and agreements

41. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and the utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.