

SCHEDULE 19

Protective Provisions

PART 8

FOR THE PROTECTION OF THE NUCLEAR DECOMMISSIONING AUTHORITY AND MAGNOX LIMITED

Application

85. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and NDA and / or Magnox (as applicable).

Interpretation

86. In addition to article 2 (interpretation), the terms in this Part have the following meanings—

“access road” means the private access road connecting the Magnox Site and NDA Site to the adopted highway (sizewell gap road) shown on the Access Road Plan;

“Access Road Plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc) and identified in Schedule 23 for the purposes of this Order;

“alternative installations” means appropriate alternative installations to the satisfaction of NDA and / or Magnox (as applicable) to enable NDA and / or Magnox (as applicable) to fulfil its obligations under the Designating Directions and NSL in a manner not less efficient than previously;

“Designating Directions” mean the nuclear site directions in force in respect of any part of the NDA Site and made by the Secretary of State in exercise of the powers contained in sections 3, 4 and 16 of the Energy Act 2004;

“installation(s)” means any buildings, structures, cooling water infrastructure, services and any other uses and apparatus belonging to or maintained by or used by NDA or Magnox within the Site and / or the Rights Land as identified by NDA or Magnox (as applicable) in accordance with paragraph 99;

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

“Magnox” means Magnox Limited (Company No.02264251) and includes its successors in title, agents, assigns, officers, servants contractors or agents;

“Magnox Rights Land” means that part of the Order Land in which Magnox has a legal or beneficial interest including any easement, liberty, privilege, right, advantage or restrictive covenant but excluding a freehold or leasehold interest;

“Magnox Site” means that part of the Order Land in which Magnox has a freehold or leasehold interest;

“NDA” means the Nuclear Decommissioning Authority, a non-departmental public body established by the Energy Act 2004, and any successor body with responsibility for carrying out the same or similar statutory functions;

“NDA Rights Land” means that part of the Order Land in which NDA has a legal or beneficial interest including any easement, liberty, privilege, right, advantage or restrictive covenant but excluding a freehold or leasehold interest

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“NDA Site” means that part of the Order Land in which NDA has a freehold or leasehold interest;

“NSL” means a nuclear site licence granted by the Office for Nuclear Regulation in exercise of powers contained in sections 1(1), 3 and 4 of the Nuclear Installations Act 1965;

“NSL Site” means those parts of the Site in respect of which an NSL is in force from time to time and means the nuclear site licence, as amended from time to time, for the Site granted by the Secretary of State in exercise of powers under sections 1(1), 3 and 4 of the Nuclear Installations Act 1965 on 28th November 1997 to Magnox;

“plans” includes sections, designs, design data, software, drawings, specifications, descriptions (including descriptions of methods of construction), method statements, soil reports, programmes, staging proposals and other supporting information that are reasonably necessary to properly and sufficiently describe the works to be executed;

“Rights Land” means the NDA Rights Land and the Magnox Rights Land;

“Site” means the NDA Site and the Magnox Site;

“specified works” means so much of any of the authorised development as is situated upon, across, under, or over the Site and / or the Rights Land or that are near to, or will or may in any way adversely affect the installations; and

“working days” has the same meaning as in article 2(1) (interpretation) of this Order.

Acquisition of Land and Installations

87.—(1) Despite any provision of this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not—

(a) exercise any power to acquire any part of the Site, or any right, interest, or installations in the Site, or override any easement or other interest in the Site or extinguish any right or suspend any right of NDA and / or Magnox (as applicable) in the Site or impose any restrictions in the Site otherwise than by agreement with NDA and / or Magnox (as applicable) and—

(i) only once the Designating Directions in respect of the relevant part of the NDA Site have been modified or revoked to the satisfaction of NDA by the Secretary of State in accordance with section 5 of the Energy Act 2004;

(ii) subject to sub-paragraph (3), only once the NSL in respect of the relevant part of the NSL Site has been surrendered by Magnox or revoked by the Office for Nuclear Regulation; and

(iii) where required by NDA and / or Magnox, the undertaker has first provided an alternative installation pursuant to this Part; and

(iv) where required by NDA and / or Magnox, the undertaker has first provided an alternative, equivalent right, interest, easement or other interest pursuant to this Part, to ensure the continued decommissioning of the NSL Site and the continued compliance by NDA and / or Magnox of their respective statutory requirements.

(b) exercise any power to temporarily possess any order land located within the Site otherwise than by agreement with NDA and / or Magnox (as applicable).

(2) Despite any provision of this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not exercise any power to acquire any installations in the Rights Land, or acquire any right or interest of NDA and/or Magnox (as applicable) in the Rights Land, or override any easement or other interest of NDA and / or Magnox (as applicable) in the Rights Land or extinguish any right or suspend any right of NDA and/or Magnox (as applicable) in the Rights Land otherwise than by agreement with NDA and / or Magnox (as applicable) and only:

- (a) where required by NDA and / or Magnox, the undertaker has first provided an alternative installation pursuant to this Part; and /or
- (b) where required by NDA and / or Magnox the undertaker has first provided an alternative, equivalent right, interest, easement or other interest pursuant to this Part,

to ensure the continued decommissioning of the NSL Site and the continued compliance by NDA and / or Magnox of their respective statutory requirements.

(3) Where the undertaker and NDA and / or Magnox (as applicable) agree under this paragraph that any land interest in the NSL Site, or installations in the NSL Site, may be acquired by agreement at a time when the NSL remains in force, such acquisition may only take place after the consent of the Office for Nuclear Regulation has first been obtained by Magnox in accordance with the NSL.

Right of access

88.—(1) The undertaker must not stop up in whole or in part the access road or extinguish in whole or in part any right of NDA and / or Magnox (as applicable) along the access road unless and until:

- (a) an equivalent replacement access has been agreed by the undertaker and NDA and / or Magnox (as applicable) (such agreement not to be unreasonably withheld or delayed); and
- (b) such replacement access has been put in place to the reasonable satisfaction of NDA and / or Magnox (as applicable) and in accordance with all safety and emergency response requirements; and
- (c) NDA and / or Magnox (as applicable) has/have been granted the same rights in respect of the replacement access as NDA and / or Magnox (as applicable) enjoyed immediately before the stopping up or extinguishment of the access road.

(2) The undertaker must ensure that a full right of access for all emergency, operational and user purposes is maintained at all times by means of the access road or replacement access as set out in sub-paragraph (1).

Removal of Installations and Execution of Specified Works

89. If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any installation is located or placed, that installation must not be removed under this Part or under any other statutory power, and any right of NDA and / or Magnox (as applicable) to use, access, maintain, or renew installations on, in or over that land must not be extinguished until either alternative installations have been constructed in accordance with paragraph 105 of this Part and are in operation to the reasonable satisfaction of NDA and / or Magnox (as applicable) or NDA and / or Magnox (as applicable) provides its written consent (such agreement not to be unreasonably withheld or delayed) to removal without alternative installations being required, constructed or in operation.

90.—(1) Not less than 56 working days before the intended removal of installations and construction of alternative installations or execution of specified works, the undertaker must supply to NDA and / or Magnox (as applicable) plans of the works to be executed for the reasonable approval of NDA and / or Magnox (as applicable) and the removal of installations, construction of alternative installations and / or the execution of specified works must not be commenced except in accordance with plans approved in writing by NDA and / or Magnox (as applicable) or settled by arbitration under article 84 (arbitration) of this Order.

(2) The approval of NDA and / or Magnox (as applicable) must not be unreasonably withheld or delayed and NDA and / or Magnox (as applicable) must indicate its approval or disapproval of the plans submitted under sub-paragraph (1) within—

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- (a) a period of 56 working days beginning with the day immediately following that on which the plans are received by NDA and / or Magnox (as applicable);
- (b) a period of 56 working days beginning with the day immediately following that on which the further information has been supplied in full by the undertaker following a request from NDA and / or Magnox (as applicable) under paragraph 91; or
- (c) such longer period than 56 working days in sub-paragraph (a) or (b) as may be agreed in writing by the undertaker and NDA and / or Magnox (as applicable) before the end of such 56 day period.

(3) Any approval of NDA and / or Magnox (as applicable) under this paragraph may be provided subject to such requirements as NDA and / or Magnox (as applicable) considers reasonable.

(4) The removal of installations, construction of alternative installations or the execution of specified works must be executed only in accordance with the plans submitted and approved by NDA and / or Magnox (as applicable) under this paragraph and in accordance with such reasonable requirements of NDA and / or Magnox (as applicable) and NDA and / or Magnox (as applicable) is entitled to watch and inspect the execution of those works, and the undertaker must supply NDA and / or Magnox (as applicable) with any additional information concerning such works as NDA or Magnox may reasonably require.

(5) Where NDA and / or Magnox (as applicable) requires any protective works under sub-paragraph (3) to be carried out either by itself or by the undertaker (whether of a permanent or temporary nature), the protective works must be carried out to NDA and / or Magnox's (as applicable) reasonable satisfaction prior to the carrying out of the specified works.

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

91.—(1) Following receipt of plans under paragraph 90 of this Part, NDA and / or Magnox (as applicable) may request such reasonable further information from the undertaker as is necessary to enable it to consider the plans.

(2) Any request under sub-paragraph (1) must be made within a period of 28 working days beginning with the day immediately following that on which the plans are received by NDA and / or Magnox (as applicable).

Expenses

92. Subject to paragraph 93 of this Part, the undertaker must pay to NDA and / or Magnox (as applicable) the proper and reasonable expenses reasonably incurred by NDA and / or Magnox (as applicable) in, or in connection with, the inspection, alteration or protection of any installations and approvals, provided NDA and / or Magnox (as applicable) has obtained the undertaker's prior approval for any such expenditure (not to be unreasonably withheld or delayed).

93. NDA and / or Magnox (as applicable) is not required to seek the undertaker's prior approval pursuant to paragraph 92 and 95 of this Part for expenditure required in the case of an emergency but in that case NDA and / or Magnox (as applicable) must give to the undertaker notice of any such expenditure as soon as is reasonably practicable.

94. In paragraph 93 of this Part "emergency" means works whose execution at the time when they are executed are required in order to put an end to or to prevent the occurrence of circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Indemnity

95.—(1) Subject to sub-paragraph (3), if by reason, or in consequence, of the construction, use, existence, operation or failure of any specified works or in consequence of the construction, use, existence, operation, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in any 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, any damage is caused to any installations or property of NDA and / or Magnox (as applicable), or to operations, or there is any interruption in any service provided to NDA and / or Magnox (as applicable) or by NDA and / or Magnox (as applicable), or in the supply of any goods to NDA and / or Magnox (as applicable) or by NDA and / or Magnox (as applicable) or NDA and / or Magnox (as applicable) becomes liable to pay any amount to any third party, the undertaker must—

- (a) subject to paragraph 93, bear and pay on demand the proper and reasonable costs reasonably and properly incurred by NDA and / or Magnox (as applicable) in making good such damage or restoring operations, services or supply provided NDA and / or Magnox (as applicable) has obtained the undertaker's prior approval for any such costs incurred (not to be unreasonably withheld or delayed); and
- (b) indemnify NDA and / or Magnox (as applicable) for any other expenses, loss (whether direct or indirect and including losses of an economic nature), demands, proceedings, damages, claims penalty or costs incurred by or recovered from NDA and / or Magnox (as applicable) by reason or in consequence of any such damage or interruption or NDA and / or Magnox (as applicable) becoming so liable to any third party as aforesaid other than arising from any default of NDA and / or Magnox (as applicable).

(2) The fact that any act or thing may have been done by either NDA or Magnox on behalf of the undertaker or in accordance with a plan approved by NDA and / or Magnox (as applicable) or in accordance with any requirement of NDA and / or Magnox (as applicable) or its supervision does not (subject to sub-paragraph (3)) excuse the undertaker from liability under sub-paragraph (1) unless NDA and / or Magnox (as applicable) fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and NDA and / or Magnox (as applicable) in writing.

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

(4) NDA and / or Magnox (as applicable) must give the undertaker reasonable written notice (being not less than 28 working days) of any claim or demand and, subject to sub-paragraph (5), NDA and / or Magnox (as applicable) may decide whether or not to pass conduct of any proceedings necessary to rest the claim or demand to the undertaker.

(5) Where NDA and / or Magnox (as applicable) decides—

- (a) to retain conduct of any proceedings necessary to rest the claim or demand, NDA and / or Magnox (as applicable) must consult with the undertaker and have due regard to the undertakers' representations as to how the proceedings are to be conducted and no settlement, admission of liability or compromise may be made without the consent of the undertaker (not to be unreasonably withheld or delayed);
- (b) to pass conduct of any proceedings necessary to rest the claim or demand to the undertaker, the undertaker must consult with NDA and / or Magnox (as applicable) and have due regard to NDA and / or Magnox's representations (as applicable) as to how the proceedings are to be conducted and no settlement, admission of liability or compromise may be made without the consent of NDA and / or Magnox (as applicable) (not to be unreasonably withheld or delayed).

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(6) Neither NDA, Magnox nor the undertaker may make any public statement relating to any claim or demand or any settlement or compromise that may be made in respect of any claim or demand without the consent of NDA, Magnox or the undertaker (as applicable).

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

(8) NDA and / or Magnox (as applicable) must use its reasonable endeavours to mitigate and to minimise any costs, expenses, losses, demands, and penalties to which the indemnity under this paragraph applies where it is within NDA and / or Magnox (as applicable)'s reasonable ability and control to do so and, if reasonably requested to do so by the undertaker, NDA and / or Magnox (as applicable) must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

96. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and either NDA or Magnox (as applicable) in respect of any installations located at or providing access into the Site or Rights Land on the date on which this Order is made.

Co-operation

97. The undertaker must not exercise any power under this Order which would interfere with the ability for NDA and Magnox to facilitate the decommissioning and delicensing of the NSL Site, and fulfilment of any statutory requirements, unless otherwise agreed in writing between the NDA and / or Magnox (as applicable) and the undertaker.

Arbitration

98. Any dispute arising between the undertaker and NDA and / or Magnox (as applicable) under this Part of this Schedule must be referred to and settled by arbitration under article 84 (arbitration) unless otherwise agreed in writing between the undertaker and NDA and / or Magnox (as applicable).

Installation(s) plan

99. For the purpose of identifying the installations to which the provisions of this Part shall have effect, NDA and / or Magnox (as applicable) must supply plans identifying the location of any buildings, structures, cooling water infrastructure, services, pipelines and any other uses and apparatus belonging to or maintained by or used by NDA or Magnox, such plans to be updated and notified to the undertaker from time to time.