

SCHEDULES

SCHEDULE 9

Article 34

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF NATIONAL GRID

Application

1. For the protection of National Grid as referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

2.—(1) In this Part of this Schedule—

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

“apparatus” means mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

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

“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, across, along or upon such land;

“National Grid” means National Grid Gas plc (Company No. 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH; and

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

“specified work” means so much of any of the works comprised in the authorised development or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 5(3) or otherwise; and/or
- (b) include any of the activities that are referred to in paragraph 8 of TP/SSW/22 (National Grid’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”).

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(2) Except for paragraphs 3 (apparatus of National Grid in streets subject to temporary prohibition or restriction), 7 (retained apparatus: protection of National Grid as gas undertaker), 8 (expenses) and 9 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in streets subject to temporary prohibition or restriction

3. Notwithstanding the temporary prohibition or restriction under the powers of article 11 (temporary prohibition or restriction of use of streets), National Grid shall be at liberty at all times to take all necessary access across any such street and/or to execute 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 prohibition or restriction was in that street.

Acquisition of land

4.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

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

Removal of apparatus

5.—(1) If, in the exercise of the agreement reached in accordance with paragraph 4 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 National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (3) to (6) inclusive.

(2) As a condition of agreement between the parties in paragraph 4, prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between the National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/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 authorised development.

(3) If, for the purpose of executing any works comprised in 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 National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in

consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (4) afford to National Grid to their satisfaction (taking into account paragraph 6(1) below) the necessary facilities and rights for—

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

(4) 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 (3), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(5) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(6) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (3) or (4), 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

6.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to National Grid 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 shall be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid 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 (2), article 38 (arbitration) of the Order shall apply.

Retained apparatus: protection of National Grid as Gas Undertaker

7.—(1) Not less than 56 days before the commencement of any specified work that does not require the removal of apparatus under paragraph 5(3) (removal of apparatus) the undertaker must submit to National Grid a plan and seek from National Grid details of the apparatus belonging to or maintained by National Grid.

- (2) The plan to be submitted to National Grid under sub-paragraph (1) must show—
 - (a) the exact position of the works;
 - (b) the level at which these are proposed to be constructed or renewed;

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- (c) the manner of their construction or renewal including details of excavation, 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) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.
- (4) Any approval of National Grid required under sub-paragraph (2)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
 - (b) must not be unreasonably withheld or delayed.
- (5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid 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 National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.
- (7) Where National Grid 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 National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid 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 National Grid in accordance with sub-paragraphs (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 1 to 2 and 4 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(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 before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.
- (10) 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 National Grid 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 specified works authorised under the Order the undertaker must comply with National Grid'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" as the same may be replaced from time to time.

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid 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 8.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 5(4) all costs incurred as a result of such action;
- (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; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this 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 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 settled by arbitration in accordance with article 38 (arbitration) of the Order 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 National Grid by virtue of sub-paragraph (1) shall 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, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

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

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- (a) an extension of apparatus to a length greater than the length of existing apparatus shall 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 shall 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 National Grid in respect of works by virtue of sub-paragraph (1) shall, 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 National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by 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 him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any material 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 National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—

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

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision shall not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Grid 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 materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 6 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section (b) shall be subject to the full terms of this Schedule including this paragraph 9 in respect of such new apparatus.

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

Enactments and agreements

10. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid 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

11.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 5(3) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

12. If in consequence of the agreement reached in accordance with paragraph 4(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

13. Save for differences or disputes arising under paragraphs 5(3), 5(5), 6(1) and 7 any difference or dispute arising between the undertaker and National Grid under this Schedule shall, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 38 (arbitration) of the Order.

PART 2

FOR THE PROTECTION OF BT GROUP PLC

14.—(1) For the protection of BT Group Plc the following provisions have effect, unless otherwise agreed in writing between the undertaker and BT Group Plc.

(2) In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003((1));

“BT apparatus” means all boxes, cables, poles and plant, associated cabling or ducting or such other electronic communications apparatus as is owned by BT Group Plc;

“BT apparatus map” means a map prepared by BT Group Plc showing the location of BT apparatus in or on the Order land;

“BT Group Plc” means British Telecommunications Public Limited Company (Company No. 01800000) whose registered office is at 81 Newgate Street, London, EC1A 7AJ which is an electronic communications code operator;

(1) 2003 c.21.

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“Click Before You Dig” means the team within BT Group Plc charged with providing assistance to members of the general public in order to locate BT apparatus on land and includes any successor team within BT Group Plc with the same remit;

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽²⁾;

“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;

“the highway” includes carriageways, verges, footpaths etc; and

“Network Alterations team” means the team within BT Group Plc charged with carrying out planned diversion and protection works to BT apparatus and includes any successor team within BT Group Plc with the same remit.

15.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any BT 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 other property of BT Group Plc; or

(b) there is any interruption in the supply of the service provided by BT Group Plc,

the undertaker must bear and pay the cost reasonably incurred by BT Group Plc in making good such damage or restoring the supply and make reasonable compensation to BT Group Plc 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 BT Group Plc, its officers, servants, contractors or agents.

(3) BT Group Plc 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.

(4) Any difference arising between the undertaker and BT Group Plc under this part of this Schedule must be referred to and settled by arbitration under article 38 (arbitration).

16. This part of this Schedule does not apply to—

(a) any BT apparatus in respect of which the relations between the undertaker and BT Group Plc are regulated by the provisions of Part 3 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.

17. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and BT Group Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

18. The undertaker must not enter into any underground structures owned by BT Group Plc without authorised BT Group Plc personnel.

(2) See section 106.

19. The undertaker must confirm the location and nature of works arising from the construction of the authorised development which, in the undertaker's reasonable opinion, are likely to affect BT apparatus within or immediately adjacent to the Order land by contacting the Network Alterations team with detailed plans of the works and to check what alterations to BT apparatus (if any) may be required.

20. Prior to any works commencing or the moving of heavy plant or equipment over BT apparatus within or immediately adjacent to the Order land, the undertaker must confirm details of such BT apparatus with a representative from Click Before You Dig who will provide a map(s) showing the location of BT apparatus within or immediately adjacent to the Order land.

21. In the event that any BT apparatus within or immediately adjacent to the Order land is likely to be placed at risk, either temporarily or permanently because of the movement of plant or equipment or both pursuant to the authorised development, the undertaker must contact a Network Alterations team representative.

22. In the event that works undertaken by the undertaker pursuant to the authorised development necessitate a change in level of the frames and covers comprised within BT apparatus, the undertaker must seek consent from a Network Alterations team representative to carry out such works.

23. Where the BT apparatus map(s) show(s) BT apparatus within or immediately adjacent to the Order land, the undertaker must contact Click Before You Dig before commencing works on or moving plant or equipment onto the Order land, to ensure that any sub-surface BT apparatus can be located and marked up by BT Group Plc.

24. Protection measures for BT apparatus within or immediately adjacent to the Order land and which may be affected by the authorised development must be approved in advance by Click Before You Dig. In carrying out the authorised development, the undertaker must take reasonable care in the protection of BT apparatus comprising optical fibre or co-axial cabling or both and use reasonable endeavours to avoid disturbing BT apparatus.

25. Prior written notice must be provided to Click Before You Dig of any excavating or backfilling proposed by the undertaker around BT apparatus, so that BT Group Plc representatives can attend the Order land if necessary. Unless alternative protection is agreed with Click Before You Dig or a Network Alterations team representative in advance, the normal depth of cover for BT apparatus underground of 350mm in footways and 600mm in carriageways must be maintained by the undertaker. Where the undertaker considers that it can not maintain the relevant depth of BT apparatus, the undertaker must provide written notice to Click Before You Dig, and BT Group Plc may, if reasonable in all the circumstances, within 14 days notify the undertaker in writing that it requires the undertaker to divert the BT apparatus at the undertaker's expense.

26. All excavation works undertaken by the undertaker immediately adjacent to BT apparatus within or immediately adjacent to the Order land is to be carried out by hand until the extent and location of the BT apparatus is known. Mechanical borers or excavators or both must not be used within 1 metre of BT Apparatus (2 metres if it is a pole) without the prior approval of a BT Group Plc representative.

27. To prevent any movement of BT apparatus within or immediately adjacent to the Order land during any excavation as part of the construction of the authorised development, structural support is to be used as directed by Click Before You Dig or the Network Alteration team if the excavation is—

- (a) deeper than the immediately adjacent BT apparatus;
- (b) within 1 metre of BT apparatus in stable soil; or
- (c) within 5 metres of BT apparatus in unstable soil.

28. The undertaker must notify Click Before You Dig in advance of carrying out any of the following methods of construction or site preparation as part of the authorised development on or in

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Order land that is immediately adjacent to BT apparatus or on or in Order land within which there is BT apparatus—

- (a) pile driving within 10 metres of BT apparatus;
- (b) using explosives within 20 metres of BT apparatus; or
- (c) using laser equipment within 10 metres of BT apparatus.

29. The undertaker will keep clear and unobstructed access to BT Group Plc manhole and joint box chambers within the Order land.

30. In the event of any damage to BT apparatus, the undertaker must immediately inform a BT Group Plc representative.

PART 3

FOR THE PROTECTION OF DŴR CYMRU CYFYNGEDIG

31. For the protection of DCC referred to in this Part 3 of Schedule 9, the following provisions will, unless otherwise agreed in writing between the undertaker and DCC, have effect.

32. In this Part of this Schedule—

“acceptable insurance” means a policy of public liability/third party liability insurance effected and maintained by the undertaker and available in the market on commercially reasonable terms having regard (inter alia) to premiums required and the policy terms obtainable, with a level of insurance cover to be agreed between the undertaker and DCC, during the construction of the works pursuant to this Order with a reputable insurer and with DCC named as an insured party under the policy;

“accessories” has the same meaning as that set out in section 219 WIA 1991 but also includes any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or surface water and which is part of a sustainable drainage system;

“DCC apparatus” means all apparatus or accessories vested in or belonging to DCC for the purpose of carrying on its statutory undertaking including reservoirs, water treatment works and waste water treatment works;

“clearance area” means the area of land—

- (a) within 3 metres either side of the centre line of any public sewer or public water main that is less than 300mm in diameter;
- (b) within 6 metres either side of a public sewer or public water main where the public sewer or public water main is between 300mm and 600mm in diameter; or
- (c) within 9 metres either side of the centre line of a rising main;

“DCC” means Dŵr Cymru Cyfyngedig, a limited company registered in Wales under Company No. 2366777 and having its registered office at Pentwyn Road, Nelson, Treharris, Mid Glamorgan CF46 6LY or its properly authorised agents or sub-contractors;

“draft specification” means a detailed plan, cross-section and description of the works to be prepared by the undertaker (including, without limitation, a method statement and risk assessment setting out the intention in respect of the works, construction methods and programmes, position of the affected DCC apparatus and intended works and a statement that to the best of the undertaker’s knowledge, and having used all reasonable care and skill to plan the works, the works will not cause damage to the DCC apparatus);

“functions” has the same meaning as in section 219 WIA 1991 and includes powers and duties;

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

“sustainable drainage system” means any structure designed to receive rainwater and other surface water which structure is to include any feature or aspect of design that is intended to receive or facilitate the receipt of rainwater except a public sewer or a natural watercourse;

“WIA 1991” means the Water Industry Act 1991 c.56 as amended; and

“works” means any works forming part of the authorised development in, on, over or under any land purchased, held, or used under this Order that are near to, or will or may in any way affect any DCC apparatus together with all ancillary actions relating hereto.

33.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any DCC apparatus or its accessories or override or extinguish any easement or other interest of DCC or acquire any land or other interest of DCC identified in the book of reference or create any new rights over the same otherwise than by agreement with DCC in accordance with the provisions of this Schedule.

(2) Sub-paragraph (1) does not apply to the powers conferred on the undertaker by this Order to interfere temporarily with DCC’s rights to access DCC apparatus or accessories but subject always to each sub-paragraph of paragraphs 37 and 38 of this Part and to the undertaker giving DCC 28 days’ notice of such interference.

Precedence of the WIA 1991

34.—(1) Regardless of any provision of this Order and this Schedule the undertaker must comply fully with all provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DCC apparatus and nothing in this Order releases the undertaker from the requirement to comply with the provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DCC apparatus, including without limitation—

- (a) sections 41-44 of the WIA 1991 in respect of water main requisitions;
- (b) section 45 of the WIA 1991 in respect of any connections to a water main;
- (c) sections 98-101 of the WIA 1991 in respect of sewer requisitions;
- (d) section 102 of the WIA 1991 in respect of the adoption of sewers and disposal works;
- (e) section 104 of the WIA 1991 in respect of the adoption of any sewers, drains or sewage disposal works as part of the development;
- (f) sections 106 to 109 of the WIA 1991 (inclusive) in respect of any connections to public sewers;
- (g) section 111 of the WIA 1991 in respect of the restrictions on use of public sewers;
- (h) sections 158 and 159 of the WIA 1991 in respect of statutory rights of access to DCC apparatus;
- (i) section 174 of the WIA 1991 in respect of offences of interference with works etc;
- (j) section 178 of the WIA 1991 in respect of obstruction of sewerage works etc; and
- (k) section 185 of the WIA 1991 in respect of the removal, diversion or alteration of DCC apparatus.

(2) The arbitration provisions at article 38 or specified in this Schedule do not apply where DCC uses a warrant of entry in accordance with the provisions of the WIA 1991.

Protection of DCC apparatus

35.—(1) Not less than 28 days before starting the execution of any works that are within the clearance area or will, or could reasonably foreseeably affect, any DCC apparatus the removal or alteration of which has not been required by the undertaker under paragraph 34(1)(k), the undertaker must submit to DCC written notice together with a draft specification.

(2) DCC must examine the draft specification submitted under sub-paragraph (1) and give its written consent or proposed amendments (each not to be unreasonably withheld or delayed) to the draft specification (including the proposed commencement date and anticipated completion date) within 28 days from the date of receipt (and in the event of amendments the process in this sub-paragraph (2) must be repeated where those amendments are not accepted). For the avoidance of doubt, DCC's proposed amendments may include such reasonable requirements for the alteration (including but not limited to the extension of DCC apparatus) or otherwise for the protection of DCC apparatus, or for securing access to it.

(3) Once approved under sub-paragraph (2), the draft specification is to be the specification and the works must be executed only in accordance with the specification and such reasonable requirements as may be made in accordance with sub-paragraph (2) and DCC is entitled to watch and inspect the execution of those works.

(4) Nothing in this paragraph 35 precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a draft specification instead of the draft specification previously submitted, and having done so the provisions of this paragraph 35 apply to and in respect of the new draft specification.

(5) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency provided it has complied with paragraph 36 below save that the undertaker must comply with sub-paragraphs (1) and (3) above in so far as is reasonably practicable in the circumstances.

(6) DCC may opt to carry out any temporary and/or protective works specified under sub-paragraph (2) to DCC apparatus, and if DCC opts to do so it must—

- (a) agree the scope and timings of the works with the undertaker (and the undertaker must not unreasonably withhold or delay its agreement to the same);
- (b) provide an invoice together with supporting evidence of the estimated costs of the works on the basis of which it must agree with the undertaker the reasonable costs of the works to be met by the undertaker;
- (c) following agreement and payment of the costs, DCC must as soon as reasonably practicable carry out and complete the works; and
- (d) notify the undertaker immediately in writing upon completion of the temporary and/or protective works.

(7) Only those contractors that satisfy DCC's reasonable health & safety requirements are permitted to make openings into and/or connections with and/or carry out any works on or within any public sewer or drain vested in DCC unless otherwise agreed with DCC.

(8) Only DCC is permitted to make openings into and/or connections with and/or carry out any works on or within any public water main vested in DCC unless otherwise agreed with DCC.

(9) Where DCC apparatus will be affected by the works the undertaker must determine the exact location of DCC apparatus prior to any works being carried out by the undertaker and the undertaker should contact DCC where trial holes are required and such trial holes must be constructed at the undertaker's expense.

(10) Any affected DCC apparatus which is no longer required by DCC but is not removed must be transferred to the undertaker by way of a deed of transfer from DCC at the undertaker's expense and on such terms as DCC reasonably requires.

Suspension of works

36. DCC is entitled to instruct the undertaker to suspend the works if in DCC’s reasonable opinion the actions of the undertaker, or those of its contractor(s) or subcontractor(s) in carrying out the works, have caused damage to any DCC apparatus and/or are likely to cause or result in damage to any DCC apparatus and/or have caused or are likely to cause damage to the environment arising as a result of damage to DCC apparatus. In the event of such instruction being given by DCC—

- (a) the undertaker must procure that it and its contractor(s) and subcontractor(s) are to forthwith suspend or cease the works having due regard to health and safety factors and discuss and agree with DCC the remedial actions required prior to resuming the works;
- (b) the undertaker and DCC must act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the works;
- (c) DCC must submit to the undertaker within 5 days following the suspension, a written notice specifying the reasons for suspending the works;
- (d) in the event that DCC fails to supply the written notice within 5 days of suspension DCC’s instruction to suspend the works will be void and the undertaker will be entitled to recommence the works;
- (e) DCC must commence, carry out and complete any remedial works pursuant to sub-paragraph (a) as soon as reasonably practicable and DCC must give the undertaker notice immediately upon completion of such remedial works and on receipt of such notice the undertaker will be entitled to resume the works; and
- (f) DCC is entitled to reclaim all reasonable costs of all remedial works undertaken in accordance with this paragraph 36.

37.—(1) In the event that either the undertaker or DCC (for the purpose of this paragraph 37 “the party” or together “the parties”) wishes to take any action which would impact on the ability of the undertaker to carry out the development or DCC to carry out its statutory functions, the parties must use reasonable endeavours to cooperate with one another in order to align work streams so to minimise or avoid disruption to the other party’s works. In respect of the references to ‘work’ and ‘works’ in this sub-paragraph (1), to the extent that this refers to ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 32 of this Part does not apply.

(2) Subject to paragraph 38, differences or disputes arising between the undertaker and DCC under this Schedule must, unless otherwise agreed in writing between the undertaker and DCC, be determined by arbitration in accordance with article 38 (arbitration) of the Order.

Emergency Works

38.—(1) The undertaker is permitted to carry out emergency works provided that it first notifies DCC of the proposed emergency works. For the avoidance of doubt, in the event that DCC suffers any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification the indemnity in paragraph 40 shall apply.

(2) DCC must at all times be permitted to carry out any emergency works in relation to its DCC apparatus within the Order Limits in accordance with Part II Schedule 6 WIA 1991.

(3) Emergency works required in order for DCC to fulfil its statutory functions under sub-paragraph (2) are to take precedence over works to be carried out by the undertaker and, in such circumstances, the undertaker must reschedule its works accordingly.

(4) In respect of the references to ‘work’ and ‘works’ in this paragraph 38, to the extent that this is ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 32 of this Part does not apply.

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Insurance

39. The undertaker shall not commence any works under paragraph 35(1) to this Part unless and until the undertaker has procured acceptable insurance.

Damage to DCC apparatus

40.—(1) Subject to sub-paragraphs (3), (4), (5) and (6), the undertaker shall indemnify and hold harmless DCC against all claims demands costs damages expenses penalties and losses which DCC may have or sustain or become liable for in consequence of works under paragraph 35(1) to this Part in respect of—

- (a) the commencement, carrying out, execution or retention of the works or any breach of this Part relating to the performance of the works and shall pay compensation for loss, damage or injury caused by the actions or default of the undertaker, its contractors, subcontractors, licensees, agents and invitees relating to the performance of the works;
- (b) Damage to the environment caused by the undertaker during any works including but not limited to pollution and/or contamination; and
- (c) any breach of any stipulation or otherwise of any deeds of grant (or any renewal of any of the deeds of grant made on substantially the same terms provided that DCC has supplied the undertaker with a copy of the new document) arising from the works.

(2) Subject to sub-paragraphs (3), (4), (5) and (6), the undertaker shall bear and pay the costs reasonably incurred by DCC in making good damage to DCC apparatus or restoring an interruption in the supply provided by DCC.

(3) Nothing in sub-paragraph (1) shall impose 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 DCC, its officers, servants, contractors or agents.

(4) DCC shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker and DCC shall use all reasonable endeavours to mitigate any claims, demand, costs, damages, expenses and losses for which the undertaker may be liable under this paragraph 40.

(5) Neither the undertaker, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to DCC for any indirect or consequential loss.

(6) Nothing in this Part shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and DCC in respect of any DCC apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.

PART 4

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

41.—(1) For the protection of any operator referred to in this part of this Schedule (save for BT Group Plc which is protected by Part 2 of this Schedule) the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003(3);

(3) 2003 c.21.

“BT Group Plc” means British Telecommunications Public Limited Company (Company No. 01800000) whose registered office is at 81 Newgate Street, London, EC1A 7AJ;

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A)(4) of that code;

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(5);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

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

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

42.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker 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.

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 38 (arbitration).

43. 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 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.

(4) Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003.

(5) See section 106.

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44. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 5

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

Application

45. For the protection of the utility undertakers referred to in this Part of this Schedule (save for National Grid which is protected by Part 1 of this Schedule and Wales and West Utilities which is protected by Part 6 of this Schedule) the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker(s) concerned.

Interpretation

46. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(6)), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
 - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(7);
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility 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,

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

(6) 1989 c. 29; Section 64 was amended by the Utilities Act 2000 (c.27); Section 108, and Schedule 6, paragraphs 24, 38(1), and (3).

(7) 1991 c.56.

“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

“utility undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989⁽⁸⁾;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽⁹⁾;
- (g) a water undertaker within the meaning of the Water Industry Act 1991⁽¹⁰⁾; and
- (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

Precedence of 1991 Act in respect of apparatus in streets

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

Apparatus in streets subject to temporary prohibition or restriction

48. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute 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 prohibition or restriction was in that street.

No acquisition etc. except by agreement

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

Removal of apparatus

50.—(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 utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land 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 utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, leased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility

(8) 1989 c. 29.

(9) 1986 c. 44; Section 48 amended by Gas Act 1995 (c.45); Section 10(1), and by Schedule 3, paragraph 54(1)(h) and by the Utilities Act 2000 (c.27); Section 108, and Schedule 6, Part I, paragraphs 1, and 2(1).

(10) 1991 c.56.

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undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question 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.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

51.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

52.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, leased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 47, the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed 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 utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 45 to 51 apply as if the removal of the apparatus had been required by the undertaker under paragraph 50(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, 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 utility 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.

53.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 50(2).

(2) There is to 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,

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 38 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) 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 where such extension is required in consequence of the execution of any such works as are referred to in paragraph 50(2); and

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(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 utility undertaker in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

Expenses and costs

54.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 50(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 utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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 a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker 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.

55. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 6

FOR THE PROTECTION OF WALES AND WEST UTILITIES

Application

56. For the protection of Wales and West Utilities as referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and Wales and West Utilities, have effect.

Interpretation

57. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Wales and West Utilities to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by Wales and West Utilities for the purposes of gas supply;

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

“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;

“security infrastructure” includes cameras, perimeter fencing, fencing and gates and any other security measures required in order to ensure an appropriate level of security in respect of the authorised development or any apparatus;

“specified work” means so much of any of the works comprised in the authorised development or activities undertaken in association with the authorised development which—

- (a) are in, on or under any land purchased, leased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which is not required under paragraph 61 of this Schedule; and/or
- (b) will or may be situated within 4 metres measured in any direction of any security infrastructure belonging to or maintained by Wales and West Utilities; and/or
- (c) comprise security infrastructure to be located on plot AGI1 shown on the land plans and described in the book of reference; and

“Wales and West Utilities” means Wales and West Utilities Limited (Company No. 05046791) whose registered office is at Wales & West House, Spooner Close, Coedkernew, Newport, South Wales, NP10 8FZ.

Precedence of 1991 Act in respect of apparatus in streets

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

Apparatus in streets subject to temporary prohibition or restriction

59. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), Wales and West Utilities is at liberty at all times to take all necessary access across any such street and to execute 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 prohibition or restriction was in that street.

No acquisition etc. except by agreement

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

Removal of apparatus

61.—(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 Wales and West Utilities’ apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Wales and West Utilities 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 Wales and West Utilities in accordance with sub-paragraphs (2) to (5).

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(2) If, for the purpose of executing any works in, on or under any land purchased, leased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give Wales and West Utilities written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Wales and West Utilities reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Wales and West Utilities the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Wales and West Utilities 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.

(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 Wales and West Utilities and the undertaker or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(5) Wales and West Utilities, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38 (arbitration), and after the grant to Wales and West Utilities of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

62.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Wales and West Utilities 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 Wales and West Utilities or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Wales and West Utilities 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 Wales and West Utilities as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

63.—(1) Not less than 42 days before the commencement of any specified work the undertaker must submit to Wales and West Utilities a plan, section and description of the specified work to be executed.

(2) Those specified works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements (including but not limited to the form, location and specification of security infrastructure to be

located on plot AGI1 shown on the land plans and described in the book of reference) as may be made in accordance with sub-paragraph (4) by Wales and West Utilities for—

- (a) the alteration or otherwise for the protection of the apparatus, or for securing access to it; and/or
- (b) the alteration or otherwise for the protection of any security infrastructure belonging to or maintained by Wales and West Utilities; and/or
- (c) the provision, construction, installation or erection of any security infrastructure to be located on Plot AGI1 shown on the land plans and in the book of reference.

(3) Wales and West Utilities is entitled to watch and inspect the execution of any specified work.

(4) Any requirements made by Wales and West Utilities under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(5) If Wales and West Utilities in accordance with sub-paragraph (4) 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 61 and 62 apply as if the removal of the apparatus had been required by the undertaker under paragraph 61(2).

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified work, 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.

(7) The undertaker is not required to comply with sub-paragraph (1) in the event of any specified work necessary to maintain—

- (a) the authorised development (but only after it has been constructed); or
- (b) works undertaken in association with the authorised development on plot AGI1 shown on the land plans and described in the book of reference (but only after such works have been constructed),

in a case of emergency but in that case it must give to Wales and West Utilities notice as soon as is reasonably practicable and a plan, section and description of those specified works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

64. Subject to the following provisions of this paragraph, the undertaker must repay to Wales and West Utilities the reasonable expenses incurred by Wales and West Utilities in, or in connection with, the inspection, removal, alteration or protection of any apparatus or security infrastructure or the construction of any new apparatus or security infrastructure which may be required in consequence of the execution of any of the works referred to in paragraph 61(2) or any specified work.

65.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 61(2) or any specified work, 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 Wales and West Utilities, or there is any interruption in any service provided, or in the supply of any goods, by Wales and West Utilities, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Wales and West Utilities in making good such damage or restoring the supply; and

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(b) make reasonable compensation to Wales and West Utilities for any other expenses, loss, damages, penalty or costs incurred by the Wales and West Utilities, 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 Wales and West Utilities, its officers, servants, contractors or agents.

(3) Wales and West Utilities 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.

Enactments and agreements

66. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Wales and West Utilities in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 7

FOR THE PROTECTION OF THE SOLAR OPERATOR

Application

67. For the protection of the solar operator as referred to in this Part of this Schedule 9, the following provisions will, unless otherwise agreed in writing between the undertaker and the solar operator, have effect.

Interpretation

68. In this Part of this Schedule—

“apparatus” means any solar photovoltaic panels, cables or other apparatus belonging to or maintained by the solar operator for the purposes of electricity generation and for the export of electricity pursuant to the solar farm permission (including but not limited to all reasonably necessary protective equipment for such electricity generation and export of electricity such as security devices and fencing);

“authorised development” has the same meaning as in article 2(1) (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule is to include the use and maintenance of the authorised development;

“diversionary agreement” means a contractually binding agreement providing for the passage of a gas pipeline around the solar farm site;

“diversionary planning permission” means any planning permission that may be granted pursuant to the 1990 Act providing for the routing of a gas pipeline to avoid the solar farm site;

“gas pipeline” means a pipeline to carry gas between Maelor Gasworks and Work No. 1;

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

“solar farm permission” means full planning permission granted on 31 July 2015 by Wrexham Country Borough Council for the apparatus (Ref P/2015/0287) including any planning permission granted pursuant to an application to vary any condition of planning permission (Ref P/2015/0287) under section 73 of the 1990 Act;

“solar farm site” means the site on which planning permission was granted by the solar farm permission;

“solar operator” means the operator from time to time of the solar farm on the solar farm site which has consent pursuant to the solar farm permission; and

“specified work” means so much of any of the works comprised in the authorised development or works required to facilitate or which are incidental to the authorised development (including, but without limitation, the gas pipeline) which are in, on or under any land purchased, leased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus.

Removal of apparatus

69.—(1) If, for the purpose of executing any specified work, the undertaker requires the removal of any apparatus in the solar farm site, the undertaker must give the solar operator written notice of that requirement, together with a plan and section of the work proposed and a plan, section and description of the specified work to be executed with written confirmation of the extent to which the removed apparatus can be reinstated as soon as reasonably practicable following completion of the execution of the specified work.

(2) Within 56 days of receipt of the written notice referred to in sub-paragraph (1) the solar operator must proceed without unnecessary delay to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(3) Regardless of anything in sub-paragraph (2), the undertaker may, in the notice issued under sub-paragraph (1), give notice to the solar operator that it desires itself to execute any work, or part of any work, in connection with the removal of apparatus in any of plots GC12, GC12A and GC12B as identified on the land plans, and where such notice is given that work, instead of being executed by the solar operator, must be executed by the undertaker within 56 days of the solar operator receiving such notice.

(4) Where notice is given in the circumstances described in sub-paragraph (3), the undertaker must provide the solar operator with the opportunity to supervise any work, or part of any work, in connection with the removal of apparatus but if the solar operator does not provide any superintendence within the required 56 days, then the undertaker may proceed to execute the works.

(5) Nothing in sub-paragraphs (3) or (4) authorises the undertaker to execute the connection or disconnection of any apparatus. In carrying out any works under sub-paragraph (3) or (4), the undertaker must comply with all statutory obligations which would have been applicable had the works been carried out by the solar operator and the undertaker must ensure that the works are carried out by persons competent and suitably qualified to carry out such works.

(6) Where the undertaker has served written notice in accordance with sub-paragraph (1) the solar operator must proceed to disconnect any apparatus to be removed without delay upon written request from the undertaker.

(7) Where the undertaker has served written notice in accordance with sub-paragraph (1), the solar operator must, within 56 days of receipt of such notice, give written notice to the undertaker whether it requires the undertaker to reinstate the removed apparatus in accordance with such reasonable requirements as the solar operator may specify and if no notice is received by the undertaker, the undertaker is under no obligation to reinstate the removed apparatus.

Retained apparatus

70.—(1) Not less than 56 days before the commencement of any specified work that does not require the removal of apparatus under paragraph 69 (removal of apparatus) the undertaker must submit to the solar operator a plan, section and description of the specified work to be executed.

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(2) Those specified works must be executed 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 (4) by the solar operator for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

(3) The solar operator is entitled to watch and inspect the execution of any specified work.

(4) Any requirements made by the solar operator under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(5) If the solar operator in accordance with sub-paragraph (4) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraph 69 (removal of apparatus) applies as if the removal of the apparatus had been required by the undertaker under paragraph 69(1).

(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 days before commencing the execution of any specified work, 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.

(7) 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 solar operator notice as soon as is reasonably practicable and a plan, section and description of those specified works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

71.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the solar operator the reasonable expenses incurred by the solar operator in, or in connection with, the inspection, removal, reinstatement, alteration or protection of any apparatus which may be required in consequence of the execution of any of any of the works referred to in paragraph 69 or any specified work.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed and not reinstated 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,

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 (as provided for in paragraph 74 (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 solar operator 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 where such extension is required in consequence of the execution of any such works as are referred to in paragraphs 69 or 70; 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 the solar operator in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer the solar operator any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

72.—(1) Subject to sub-paragraphs (2) and (3), if by reason of or in consequence of the construction of any of the works referred to in paragraphs 69 or 70 or any specified work, 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 the solar operator, or there is any interruption in any service provided, or in the supply of any goods, by the solar operator, the undertaker must—

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

by reason of 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 the solar operator, its officers, servants, contractors or agents.

(3) The solar operator must give the undertaker reasonable notice of any claim or demand pursuant to sub-paragraph (1) above 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.

Co-operation

73. Where in consequence of the proposed construction of any of the authorised development or any specified work, the solar operator makes requirements for the protection or removal of apparatus under paragraphs 69(4) or 69(5), the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and/or any specified work and taking into account the need to ensure the safe and efficient and economic operation of the apparatus and the solar operator shall use its best endeavours to co-operate with the undertaker for that purpose.

Arbitration

74. Any difference or dispute arising between the undertaker and the solar operator under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the solar operator, be determined by arbitration in accordance with article 38 (arbitration).

Enactments and agreements

75. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and the solar operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

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Compulsory acquisition and temporary use

76.—(1) The rights set out in sub-paragraph (2) are not exercisable by the undertaker over the solar farm site if—

- (a) a diversionary agreement has been concluded; and
- (b) a diversionary planning permission has been granted which authorises the construction of a gas pipeline over the route to which the diversionary agreement applies; and
- (c) the land has been acquired by the undertaker under the diversionary agreement.

(2) Sub-paragraph (1) applies to the following rights—

- (a) article 17 (compulsory acquisition of land);
- (b) article 18 (compulsory acquisition of rights etc);
- (c) article 22 (acquisition of subsoil only);
- (d) article 24 (private rights);
- (e) article 25 (rights under or over streets);
- (f) article 26 (temporary use of land for carrying out the authorised development);
- (g) article 27 (temporary use of land for maintaining the authorised development); and
- (h) article 28 (statutory undertakers).