

## SCHEDULE 8

Articles 26 and 27

### Protective provisions

#### PART 1

##### Protection for Environment Agency and drainage authorities

1. The provisions of this Part have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

2. In this Part—

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

“drainage authority” means—

(a) in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991; and

(b) in relation to a main river or sea defence work, the Environment Agency;

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

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

“plans” includes any information reasonably required by the drainage authority including location details, grid references, sections, drawings, specifications, assessments and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 9 metres of a drainage work or is otherwise likely to—

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

(b) affect the flow, purity or quality of water in any watercourse; or

(c) affect the conservation, distribution or use of water resources.

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

(2) The undertaker must not commence construction of the specified work until approval, unconditionally or conditionally, has been given as provided in this paragraph.

(3) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 11.

(4) Any approval of the drainage authority required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and

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

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the protection of water resources, for the prevention of pollution or in the discharge of its environmental functions.

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

4. Without limiting paragraph 3, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

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

5.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 4, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and
- (b) to the reasonable satisfaction of the drainage authority,

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

(2) The undertaker must give to the drainage authority—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the date of completion.

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

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

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the undertaker.

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

6.—(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of the specified work maintain in good repair and condition and free from obstruction

any drainage work which is situated within the limits of deviation on land held by the undertaker for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

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

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

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

(5) This paragraph does not apply to—

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

7. If by reason of the construction of a specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

8. The undertaker must indemnify the drainage authority in respect of all costs, charges and expenses which the drainage authority may reasonably incur, have to pay or sustain—

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

9.—(1) Without limiting the other provisions of this Part, the undertaker must indemnify the drainage authority from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work;
- (b) any raising or lowering of the water table in land adjoining the authorised project or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such lands and, where the drainage authority is the Environment Agency, inadequate water quality in any watercourse or other surface waters or in any groundwater,

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caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the work.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

**10.** The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part.

**11.** Any dispute arising between the undertaker and the drainage authority under this Part, if the parties agree, is to be determined by arbitration under article 36 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Business, Energy and Industrial Strategy acting jointly on a reference to them by the undertaker or the drainage authority, after notice in writing by one to the other.

## PART 2

### Protection for Network Rail Infrastructure Limited, etc.

**1.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

**2.** In this Part—

“construction” includes execution, placing, alteration and reconstruction; and “construct” must be construed accordingly;

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

“network licence” means the network licence, as amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of the powers under section 8 of the Railways Act 1993(1);

“Network Rail” means—

- (a) Network Rail Infrastructure Limited (company number 2904597); and
- (b) any associated company of Network Rail Infrastructure Limited which holds property for railway purposes,

and for the purpose of paragraph (b) “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(2)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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(1) 1993 c.43. Section 8 was amended by paragraph 4 of Schedule 17 and Part 4 of Schedule 31 to the Transport Act 2000 (c.38), paragraphs 3 and 5 of Schedule 2 to the Railways and Transport Safety Act 2003 (c.20), paragraph 3 of Schedule 1 and Part 1 of Schedule 13 to the Railways Act 2005 (c.14) and Part 1 of Schedule 1 to S.I. 2015/1682.

(2) 2006 c.46

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“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993(3)) or station lease;

“railway property” means—

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

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

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

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

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

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

- (a) article 12 (discharge of water);
- (b) article 13 (authority to survey and investigate land);
- (c) article 15 (compulsory acquisition of land);
- (d) article 18 (compulsory acquisition of rights);
- (e) article 19 (private rights);
- (f) article 21 (acquisition of subsoil only);
- (g) article 24 (temporary use of land for carrying out authorised project);
- (h) article 25 (temporary use of land for maintaining the authorised project);
- (i) article 27 (statutory undertakers);
- (j) article 34 (felling or lopping of trees and removal of hedgerows); or
- (k) section 11(3) of the 1965 Act,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic code communications operators: preliminary notices) of the 1990 Act(4) or by article 27 (statutory

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(3) “Access agreement” is defined in section 83. The definition was amended by section 230 of the Transport Act 2000.

(4) Section 272 was amended by paragraph 103 of Schedule 17 to the Communications Act 2003.

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undertakers) in relation to any right of access of Network Rail to railway property, but the right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers conferred by this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

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

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

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if, by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail, the engineer has not intimated disapproval of those plans and the grounds of disapproval—

- (a) the undertaker may serve on the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date on which the engineer receives written notice from the undertaker; and
- (b) if by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

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

(4) When signifying approval of the plans, the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using them (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified work), and—

- (a) such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and at the expense of the undertaker in either case, with all reasonable dispatch; and
- (b) the undertaker must not commence the construction of the specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

**6.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

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

(3) Nothing in this Part imposes—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents; or
- (b) any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

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

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

9.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail.

(2) If Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(3) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail, then, if the undertaker decides that that part of the specified work is to be constructed,—

- (a) Network Rail must assume construction of that part of the specified work; and
- (b) the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that part of the specified work.

(4) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

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

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, guards and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified work, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**11.—(1)** In this paragraph—

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

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

(2) This paragraph applies to EMI only to the extent that the EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

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

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

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;



- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified under paragraph (a); and
  - (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified under paragraph (a).
- (5) In any case where it is established that EMI can reasonably be prevented only by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution are in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) have effect subject to the sub-paragraph.
- (6) If, at any time before the commencement of regular revenue-earning operations of the authorised development and notwithstanding any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised development causes EMI, then the undertaker must immediately on receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) immediately cease to use (or procure the cessation of use of) the undertaker's apparatus causing the EMI until all measures necessary have been taken to remedy the EMI by way of modification to the source of the EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.
- (7) In the event of EMI having occurred —
- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of the EMI;
  - (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of the EMI; and
  - (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or the EMI.
- (8) Where Network Rail approves modifications to Network Rail's apparatus under sub-paragraphs (5) or (6)—
- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
  - (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.
- (9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.
- (10) For the purpose of paragraph 10(a), any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that sub-paragraph.
- (11) In relation to any dispute arising under this paragraph, the reference in article 36 (arbitration) to the Secretary of State must be read as a reference to the President of the Institution of Engineering and Technology.

**12.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property,

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the undertaker must, on receipt of the notice, take such steps as may be reasonably necessary to put the specified work in such state of maintenance as not adversely to affect railway property.

**13. The undertaker—**

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

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

**15.—(1) The undertaker must—**

- (a) pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part which may be occasioned to or reasonably incurred by Network Rail by reason of—
  - (i) the construction, maintenance or failure of a specified work; or
  - (ii) any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged on a specified work; and
- (b) indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission.

(2) The fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the supervision of the engineer does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

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

(4) The sums payable by the undertaker under sub-paragraph (1) must include a sum equivalent to the relevant costs.

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

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

(7) In this paragraph—

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

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

**16.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part (including the amount of the relevant costs referred to in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part (including any claim relating to the relevant costs).

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

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

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

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

**20.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 5 (transfer of benefit of Order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

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

**21.** The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 35 (certification of plans, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read-only memory.

## PART 3

### Protection for National Grid Gas plc and National Grid Electricity Transmission plc

#### **Part to have effect unless otherwise agreed**

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

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## Interpretation

### 2. In this Part—

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

“apparatus” means—

- (a) electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid Electricity as a licence holder within the meaning of Part 1 of the 1989 Act;
- (b) any mains, pipes or other apparatus belonging to or maintained by National Grid Gas as a gas transporter within the meaning of Part 1 of the Gas Act 1986<sup>(5)</sup>;

“authorised development” includes the use and maintenance of the authorised development;

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

“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 on such land;

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

“National Grid Electricity” means National Grid Electricity Transmission plc (company number 02366977);

“National Grid Gas” means National Grid Gas plc (company number 02006000);

“plans” includes 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;

“statutory undertaker” means—

- (a) National Grid Electricity as a licence holder within the meaning of Part 1 of the 1989 Act; and
- (b) National Grid Gas as a gas transporter within the meaning of Part 1 of the Gas Act 1986.

## Application

3. Except for paragraphs 4, 9, 10 and 11, this Part does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by Part 3 of the 1991 Act (street works in England and Wales).

### Apparatus of statutory undertakers in temporarily stopped up streets

4. Despite the temporary stopping up or diversion of any highway under article 9 (temporary stopping up of streets), a statutory undertaker may at all times take all necessary access across any such highway and execute and do all such works and things in, on or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

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(5) 1986 c.44.

### **Acquisition of land, etc.**

5.—(1) Despite 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 land interest or apparatus or override any easement or other interest of the statutory undertaker otherwise than by agreement.

(2) As a condition of agreement between the parties under sub-paragraph (1), before carrying out any part of the authorised development (or in such other timeframe as may be agreed between the undertaker and the statutory undertaker) that is subject to the requirements of this Part that—

- (a) will cause any conflict with or breach of the terms of any easement or other legal or land interest of the statutory undertaker; or
- (b) affects the provisions of any enactment or agreement regulating the relations between the undertaker and the statutory undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker,

the undertaker must, as the statutory undertaker reasonably requires, enter into such deeds of consent on such terms and conditions as may be agreed between the statutory undertaker, the undertaker acting reasonably, which must be no less favourable on the whole to the statutory undertaker unless otherwise agreed by the statutory undertaker; and it is the responsibility of the undertaker to procure or secure the consent and entering into of such deeds and variations by all third parties with an interest in the land at that time who are affected by the part of the authorised development.

(3) Where there is any inconsistency or duplication between a provisions of this Part relating to the relocation or removal of apparatus including (but not limited to) the payment of costs and expenses relating to the such relocation or removal and a provisions of any existing easement, right, agreement or licence granted, used, enjoyed or exercised by the statutory undertaker, other enactments relied on by the statutory undertaker as of right or other use in relation to the apparatus, the provisions of this Part prevails.

(4) Any agreement or consent by the statutory undertaker under paragraph 8 or any other paragraph of this Part must not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

6.—(1) If, in the exercise of an agreement reached under paragraph 5 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed—

- (a) the apparatus must not be removed under this Part; and
- (b) any right of a statutory undertaker to maintain the apparatus in the land must not be extinguished,

until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in the land, it must give to the statutory undertaker 56 days' advance written notice of that requirement, together with a plan of the work proposed and of the proposed position of the alternative apparatus to be provided or constructed; and in that case (or if, in consequence of the exercise of any of the powers conferred by this Order, the statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker to its satisfaction (taking into account paragraph 7(1)) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently, 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 the facilities and rights referred

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to in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the statutory undertaker must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, except that this obligation does not require the statutory undertaker to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker and the undertaker.

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

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

7.—(1) Where, in accordance with this Part, the undertaker affords to a statutory undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted on such terms and conditions as may be agreed between the undertaker and the statutory undertaker and must be no less favourable on the whole to the statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, unless agreed by the statutory undertaker.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the statutory undertaker under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject—

- (a) the matter must be referred to arbitration; and
- (b) the arbitrator must make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

### **Retained apparatus: National Grid Gas plc**

8.—(1) Not less than 56 days before the commencement of any works authorised by this Order that are near to, or will or may affect, any apparatus belonging to or maintained by National Grid Gas (the “statutory undertaker”), the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise, the undertaker must submit a plan to the statutory undertaker.

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

- (a) be situated on, over, under or within 15 metres measured in any direction of any apparatus;
- (b) (wherever situated) impose any load directly on any apparatus; or
- (c) involve embankment works within 15 metres of any apparatus,

the plan to be submitted to the statutory undertaker under sub-paragraph (1) must be detailed, include a method statement and describe—

- (d) the exact position of the works;
- (e) the level at which the works are proposed to be constructed or renewed;
- (f) the manner of their construction or renewal including details of excavation and the positioning of plant;

- (g) the position of all apparatus;
  - (h) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
  - (i) intended maintenance regimes.
- (3) The undertaker must not commence any works to which sub-paragraph (2) applies until the statutory undertaker has given written approval of the plan submitted.
- (4) Any approval of the statutory undertaker required under sub-paragraph (3)—
- (a) may be given subject to reasonable conditions for any purpose referred to in sub-paragraph (5) or (7); and
  - (b) must not be unreasonably withheld or delayed.
- (5) In relation to works to which sub-paragraph (2) applies, the statutory undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Works authorised by this Order must be executed only in accordance with the plan submitted under sub-paragraph (1), as amended from time to time by agreement between the undertaker and the statutory undertaker, and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and the statutory undertaker is entitled to watch and inspect the execution of the works.
- (7) Where the statutory undertaker requires any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature)—
- (a) the statutory undertaker must give at least 56 days' notice of the protective works from the date of submission of a plan under sub-paragraph (1) (except in an emergency); and
  - (b) the protective works must be carried out to the statutory undertaker's satisfaction before the commencement of any works authorised by this Order (or any relevant part of them).
- (8) If the statutory undertaker, in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 6 and 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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 any works, a new plan, instead of the plan previously submitted, and the undertaker having done so the provisions of this paragraph apply to and in respect of the new plan.
- (10) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act, but in that case the undertaker must—
- (a) give to the statutory undertaker notice and as soon as is reasonably practicable a plan of those works;
  - (b) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
  - (c) comply with sub-paragraph (11) at all times.
- (11) Within 28 days of receipt of a request from the statutory undertaker, the undertaker must submit a scheme for monitoring ground subsidence for approval by the statutory undertaker, such approval not to be unreasonably withheld or delayed, for works which are capable of interfering with or risking damage to the statutory undertaker's apparatus.

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(12) At all times when carrying out any works authorised by this Order the undertaker must comply with National Grid Gas'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 the Health and Safety Executive's guidance HSG47 (Avoiding danger from underground services).

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

9.—(1) Not less than 56 days before the commencement of any authorised works authorised by 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 6(2) or otherwise, the undertaker must submit to National Grid Electricity (the "statutory undertaker") a plan and seek from National Grid Electricity details of the underground extent of its electricity tower foundations.

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

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

the plan to be submitted to the statutory undertaker under sub-paragraph (1) must be detailed, include a method statement and describe—

- (c) the exact position of the works;
- (d) the level at which the works are proposed to be constructed or renewed;
- (e) the manner of their construction or renewal including details of excavation and positioning of plant;
- (f) the position of all apparatus; and
- (g) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

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

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

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



- (5) Any approval of the statutory undertaker required under sub-paragraph (2) or (3)—
- (a) may be given subject to reasonable conditions for any purpose referred to in sub-paragraph (6) or (8); and
  - (b) must not be unreasonably withheld.

(6) In relation to a work to which sub-paragraph (2) or (3) applies, the statutory undertaker may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

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

(8) Where the statutory undertaker requires any protective works to be carried out either itself or by the undertaker (whether of a temporary or permanent nature)—

- (a) the statutory undertaker must give at least 56 days' notice of the protective works from the date of submission of a plan under sub-paragraph (1) (except in an emergency); and
- (b) the protective works must be carried out to the statutory undertaker's reasonable satisfaction before the commencement of any works authorised by this Order (or any relevant part of them).

(9) If the statutory undertaker, in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 6 and 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

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

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act, but in that case the undertaker must—

- (a) give to the statutory undertaker notice as soon as is reasonably practicable and a plan of the works;
- (b) comply with sub-paragraph (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (c) comply with sub-paragraph (12) at all times.

(12) Within 28 days of receipt of a request from the statutory undertaker, the undertaker must submit a scheme for monitoring ground subsidence for approval by the statutory undertaker, such approval not to be unreasonably withheld or delayed, for works which are capable of interfering with or risking damage to the statutory undertaker's apparatus.

(13) At all times when carrying out any works authorised under this Order comply with National Grid Electricity's policies for development near overhead lines (EN43-8) and the Health and Safety Executive's guidance note GS6 "Avoiding danger from overhead power lines".

## **Expenses**

**10.—(1)** Subject to the following provisions of this paragraph, the undertaker must pay to the statutory undertaker on demand all charges, costs and expenses reasonably anticipated or incurred

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by the statutory undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any works referred to in this Part including without limitation any costs reasonably incurred or compensation properly paid in connection with—

- (a) the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation if the statutory undertaker elects to use compulsory purchase powers to acquire any necessary rights under paragraph 6(3) all costs incurred as a result of such action;
- (b) 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 Part.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under this Part and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with this Part—

- (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 36 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker by virtue of sub-paragraph (1) must be reduced by the amount of that excess except where it is not possible in the circumstances to obtain the existing type of operations, capacity or dimensions or to place at the existing depth in which case full costs must be borne by the undertaker.

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

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

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker 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**

**11.**—(1) Subject to sub-paragraphs (2) and (3), if—

- (a) by reason or in consequence of the construction of any works authorised by this Part;
- (b) in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker; or
- (c) in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works including without limitation works carried out by the undertaker under this Part or any subsidence resulting from any of the works),

any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the works) or property of a statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, or the statutory undertaker becomes liable to pay any amount to any third party, the undertaker must—

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

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

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

(4) A statutory undertaker must give the undertaker reasonable notice of any claim or demand, and no settlement or compromise may be made without first consulting the undertaker and considering its representations.

## **Apparatus laid, etc. on date of Order**

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

## **Co-operation**

**13.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or a statutory undertaker requires the removal of apparatus under paragraph 6(2) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 8 or 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the statutory undertaker's undertaking, and the statutory undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

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## Access

14. If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to the apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before the obstruction.

## Arbitration

15. Except for differences or disputes arising under paragraph 6(2) and (4), 7(1) and 8, any difference or dispute arising between the undertaker and a statutory undertaker under this Part must, unless otherwise agreed in writing between the undertaker and the statutory undertaker, be determined by arbitration in accordance with article 36.

# PART 4

## Protection for Anglian Water Services Limited

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

2. In this Part—

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in no less efficient a manner than previously;

“Anglian Water” means Anglian Water Services Limited (company number 02366656);

“apparatus” means—

- (a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991; and
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act, and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or will be lodged or which gives or will give access to apparatus.

“emergency” means the immediate threat of death or injury to persons, of damage to property or of damage to the environment and the risk that drinking water supply or quality will fall below the Drinking Water Inspectorate standards;

“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 on land;

“plan” includes section, drawing, specification and method statement.

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

4.—(1) The undertaker must not—

- (a) interfere with, build over or near to, any apparatus within the Order land;
- (b) execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus; or

- (c) where the apparatus is laid in a trench, execute any filling around the apparatus within the standard protection strips, which are the strips of land falling the following distances to either side of the medial line of any apparatus—
- (i) 2.25 metres, where the diameter of the pipe is less than 150 millimetres;
  - (ii) 3 metres, where the diameter of the pipe is 150 millimetres or more but less than 450 millimetres;
  - (iii) 4.5 metres, where the diameter of the pipe is 450 or more but less than 750 millimetres; and
  - (iv) 6 metres, where the diameter of the pipe is 750 millimetres or more,

unless otherwise agreed in writing by Anglian Water, following a request from the undertaker (including a description and plan of the works), such agreement not to be unreasonably withheld or delayed; and this provision must be brought to the attention of any agent or contractor responsible for carrying out any works on behalf of the undertaker.

(2) The works may be executed only in accordance with the plan and description submitted under sub-paragraph (1) and such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and an officer of Anglian Water is entitled to watch and inspect the execution of the works at the undertaker's cost.

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

(4) Anglian Water may extend the period up to 42 days with the consent of the undertaker, such consent not to be unreasonably withheld.

(5) If by the expiry of the further 42 days Anglian Water has not intimated agreement or refusal, Anglian Water is deemed to have agreed the plans as submitted.

(6) Any refusal must be accompanied by a statement of the grounds of refusal.

(7) 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 and description instead of the plan and description previously submitted, and once the undertaker has done so the provisions of this paragraph apply to and in respect of the new plan and description.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency, but in that case the undertaker must—

- (a) give to Anglian Water notice as soon as is reasonably practicable and a plan and description of the works as soon as reasonably practicable subsequently; and
- (b) comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(9) It is reasonable for Anglian Water to require that the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or the filling around the apparatus (where the apparatus is laid in a trench), be executed by Anglian Water at the expense of the undertaker.

(10) Anglian Water must execute any requirement made under sub-paragraph (9) in a timely manner.

**5.** Except in an emergency, the alteration, extension, removal or relocation of any apparatus must not be implemented until—

- (a) any requirement for permits under the Environmental Permitting (England and Wales) Regulations 2010 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such relocation are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and

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- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed,

and the works must be executed only in accordance with the plan and description submitted and with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus or for securing access to it.

**6. Where—**

- (a) in exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which apparatus is placed; and
- (b) the apparatus is to be relocated, extended, removed or altered in any way,

except in an emergency, no alteration or extension may take place until Anglian Water has established to its reasonable satisfaction contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus; and Anglian Water must use reasonable endeavours to establish contingency arrangements in a timely manner.

**7.** Despite any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement; and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, except in an emergency, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 36 (arbitration).

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

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

**10.—(1)** If, for any reason or in consequence of the construction of any of the works referred to in paragraphs 4 to 7 and 9, 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 the works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

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

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

(2) Nothing 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 Anglian Water, its officer, servants, contractors or agents.

**11.** Any difference or dispute arising between the undertaker and Anglian Water under this Part must unless otherwise agreed in writing between the undertaker and Anglian Water be determined by arbitration in accordance with article 36.

## PART 5

### Protection for Canal & River Trust

1. The provisions of this Part have effect for the protection of Canal & River Trust unless otherwise agreed in writing between the undertaker and Canal & River Trust.

2. In this Part—

“construction” includes execution, placing, alteration and reconstruction; and “construct” must be construed accordingly;

“engineer” means an engineer appointed by Canal & River Trust for the purpose of this Order;

“Canal & River Trust” means the Canal & River Trust or any successor body performing the same functions in relation to any waterways;

“Canal & River Trust property” means any land owned by Canal & River Trust within the Order limits and includes land covered with water, subsoil, air space and waterways;

“code of practice” means the code of practice<sup>(6)</sup> for works affecting Canal & River Trust (April 2015) as amended from time to time;

“plans” includes sections, designs, design data, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), programmes and details of the extent, timing and duration of any proposed use or occupation of any Canal & River Trust property;

“specified work” means so much of any of the authorised development to be situated on, across, under, over or within the waterway or that may in any way adversely affect the waterway;

“waterway” means the River Witham and includes any pond or other waterway or course situated on Canal & River Trust property, any works, services, apparatus, equipment, lands (including subsoil) or premises belonging to or under the control of Canal & River Trust and held or used by it in connection with its statutory functions in relation to the River Witham.

3.—(1) Where, under this Part or anywhere else under this Order, Canal & River Trust (or the engineer) is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that the undertaker must observe the provisions of the code of practice for works affecting waterways and, where the code of practice is adhered to and its provisions observed, such consent must not be unreasonably withheld.

(2) To avoid doubt, any consent may be given subject to reasonable conditions including a condition which requires compliance with the code of practice or any applicable part of it and, in respect of article 12 (discharge of water), it is reasonable to impose a condition requiring the payment of such charges as are typically charged by the owner of the waterway.

(3) In so far as any specified work or the acquisition of rights under or over, or the use of, Canal & River Trust property is or may be subject to the code of practice, Canal & River Trust must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from that code; and

(b) use its reasonable endeavours to avoid any conflict arising between the application of that code and the proper implementation of the authorised development under this Order.

4.—(1) The undertaker must not in the exercise of the powers conferred by this Order prevent, obstruct or interfere with pedestrian or vehicular access to any Canal & River Trust property, unless preventing, obstructing or interfering with such access is with the consent of Canal & River Trust.

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<sup>(6)</sup> Canal & River Trust (April 2015).

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(2) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act in relation to any right of access of Canal & River Trust to Canal & River Trust property, but such right of access may be diverted with the consent of Canal & River Trust.

**5.—(1)** The undertaker must, before commencing construction of any specified work or carrying out any works on Canal & River Trust property, supply to Canal & River Trust proper and sufficient plans of that work (and such further information as Canal & River Trust may reasonably require) for the approval (having regard to the undertaker's timetable for the construction of the authorised development) of the engineer; and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration in accordance with article 36 (arbitration).

(2) If by the end of the period of 28 days beginning with the date on which the plans have been supplied to Canal & River Trust the engineer has not provided, in writing, disapproval of the plans and the grounds of disapproval, the undertaker may serve on the engineer written notice requiring the engineer to intimate approval or disapproval within a period of 14 days beginning with the date on which the engineer receives written notice from the undertaker; and if by the expiry of the 14 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans, the engineer may specify any protective works (whether temporary or permanent) that in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of the waterway or the continued safe and efficient use of the waterway or any Canal & River Trust property, and—

- (a) such protective works (which for the avoidance of doubt may include requirements to fence any proposed works in order to separate them from the waterways, ponds or watercourses situated on Canal & River Trust property either on a permanent or temporary basis) as may be reasonably necessary for those purposes must be constructed by the undertaker, as agreed between the parties or settled by arbitration in accordance with article 36;
- (b) the protective works must be carried out at the expense of the undertaker with all reasonable dispatch; and
- (c) the undertaker must not commence the construction of the specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

(4) If the undertaker fails to complete the construction of, or part of, any specified work or any protective work, Canal & River Trust may, if reasonably necessary to ensure the safety or stability of the waterway or the continued safe and efficient use of the waterway, construct any specified work or protective or part of such work in order to complete the construction of, or part of, the work.

**6.—(1)** Any specified work and any protective work to be constructed by virtue of paragraph 5(3) must, when commenced, be constructed —

- (a) with all reasonable dispatch (having regard to the undertaker's timetable for construction of the authorised development) in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage or disturbance as is possible to the waterway;



- (d) in such a manner to ensure that no materials are discharged or deposited into any stream, watercourse, waterway, pond or any other water feature on or forming part of Canal & River Trust property; and
- (e) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of the waterway.

(2) If any damage to the waterway is caused by the carrying out of, or in consequence of, the construction of a specified work or a protective work, the undertaker must make good such damage and must pay to Canal & River Trust all reasonable and proper expenses that Canal & River Trust may incur or may be put to and reasonable and proper compensation for any loss which it may sustain in making good or otherwise by reason of such damage, interference or obstruction.

(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligent act or default of Canal & River Trust or its servants, contractors or agents or any liability on Canal & River Trust with respect to any damage, costs, expenses or loss attributable to the negligent act or default of the undertaker or its servants, contractors or agents.

7. The undertaker must—

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

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

9. The undertaker must repay to Canal & River Trust in accordance with the code of practice all costs, charges and expenses reasonably incurred by Canal & River Trust in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work.

10. If, at any time during or after the completion of a specified work or a protective work, Canal & River Trust gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or protective work appears to be such as adversely affects the operation of the waterway, the undertaker must, on receipt of the notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect the operation of the waterway.

11.—(1) The undertaker must pay to Canal & River Trust all reasonable and proper costs, charges, damages, losses and expenses not otherwise provided for in this Part that may be reasonably incurred by Canal & River Trust by reason of—

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

and the undertaker must indemnify and keep indemnified Canal & River Trust from and against all reasonable and proper claims and demands arising out of or in connection with a specified work or a protective work or any such act or omission within 12 months of completion of the specified work or a protective work.

(2) The fact that any act or thing may have been done by Canal & River Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any

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requirement of the engineer or under the engineer's supervision does not (if it was done without negligence on the part of Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under this paragraph.

(3) Canal & River Trust must give the undertaker reasonable notice of any such claim or demand, and except as such conduct would be contrary to law no settlement or compromise of such a claim or demand may be made without the prior written consent of the undertaker, such consent not to be unreasonably withheld or delayed.

**12.** Canal & River Trust must, on receipt of a written request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part.

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

**14.** The undertaker and Canal & River Trust may enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any Canal & River Trust property shown on the works or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such Canal & River Trust property; and
- (c) any rights and obligations (whether or not statutory) of Canal & River Trust relating to any Canal & River Trust property or any lands, works or other property referred to in this paragraph.

**15.** The undertaker must repay to Canal & River Trust in accordance with the code of practice all fees, costs, charges and expenses reasonably incurred by Canal & River Trust—

- (a) in constructing any part of a specified work or protective work on behalf of the undertaker as provided by paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing the works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any persons whom it must be reasonably necessary to appoint for inspecting, signalling, watching and lighting Canal & River Trust property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or incident arising from the construction or failure of a specified work; and
- (d) in respect of any additional temporary lighting of Canal & River Trust property in the vicinity of the specified work, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**16.—(1)** If any permanent or temporary alterations or additions to Canal & River Trust property are reasonably necessary in consequence of the construction of a specified work or a protective work during construction, or during a period of 24 months after the completion, of that work in order to ensure the safety of Canal & River Trust property or the continued safe operation of the waterway, such alterations and additions may be carried out by Canal & River Trust.

(2) If Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Canal & River Trust the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Canal & River Trust in maintaining, working and, when necessary, renewing the alterations or additions.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 15, provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

17. Any difference arising between the undertaker and Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 36.

## PART 6

### Protection for electricity, gas and sewerage undertakers

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

2. In this Part—

“affected undertaker” means—

- (a) a licence holder within the meaning of Part 1 of the 1989 Act;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986<sup>(7)</sup>;
- (c) a water undertaker<sup>(8)</sup>; and
- (d) a sewerage undertaker,

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

“alternative apparatus” means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus”—

- (a) in the case of an affected undertaker that is a licence holder within the meaning of Part 1 of the 1989 Act, means electric lines or electrical plant (as defined in the 1989 Act) belonging to or maintained by the affected undertaker;
- (b) in the case of an affected undertaker that is a gas transporter within the meaning of Part 1 of the Gas Act 1986, means any mains, pipes or other apparatus belonging to or maintained by the affected undertaker for the purposes of gas supply;
- (c) in the case of an affected undertaker that is a water undertaker, means mains, pipes or other apparatus belonging to or maintained by the affected undertaker for the purposes of water supply; and
- (d) in the case of an affected undertaker that is a sewerage undertaker—
  - (i) means—

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(7) 1986 c.44

(8) “Water undertaker” is defined in Schedule 1 to the Interpretation Act 1978.

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- (aa) any drain or works vested in the affected undertaker under the Water Industry Act 1991; and
- (bb) 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
- (ii) includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and in each case includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

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

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

5.—(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, the apparatus must not be removed under this Part, and any right of an affected undertaker to maintain that apparatus in the land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the affected undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected 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 an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the affected 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 the facilities and rights referred to in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable use all 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 must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 36 (arbitration).

(5) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 36, and after the grant to the affected 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 this Part.

(6) Despite anything in sub-paragraph (5), if the undertaker gives notice in writing to the affected 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 affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected 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.

**6.—(1)** Where, in accordance with this Part, the undertaker affords to an affected 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 on such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with article 36.

(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 affected 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 the affected undertaker as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

**7.—(1)** Not less than 28 days before commencing the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under that sub-paragraph, the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

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

(3) Any requirements made by an affected 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 an affected 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 5 and 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(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 the undertaker 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 affected undertaker in question notice as soon as is reasonably practicable and a plan, section and description of the works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

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**8.—(1)** Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by the affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any works referred to in paragraph 5(2).

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

(3) If in accordance with this Part—

- (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 36 to be necessary, then, if such placing involves cost in the construction of works under this Part 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 affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

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

**9.—(1)** Subject to sub-paragraphs (2) and (3), if, by reason or in consequence of the construction of any works referred to in paragraph 5(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 the works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the affected undertaker in making good the damage or restoring the service or supply; and
- (b) make reasonable compensation to the affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected undertaker by reason or in consequence of the 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 affected undertaker, its officers, servants, contractors or agents.

(3) An affected undertaker must give the undertaker reasonable notice of any claim or demand, and no settlement or compromise may be made without the consent of the undertaker which, if it withholds consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

## PART 7

### Protection for operators of electronic communications code networks

1. The provisions of this Part have effect for the protection of an operator unless otherwise agreed in writing between the undertaker and the operator.

2. In this Part—

“2003 Act” means the Communications Act 2003;

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

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

“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act<sup>(9)</sup>;

“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;

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

3. The exercise of the powers referred to in article 27 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984<sup>(10)</sup>.

4.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development, its construction or 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—

- (c) bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply;

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<sup>(9)</sup> See section 106

<sup>(10)</sup> 1984 c.12

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- (d) make reasonable compensation to an operator for loss sustained by it; and
  - (e) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator 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 claim or demand, and no settlement or compromise of the claim or demand may be made without the consent of the undertaker which, if it withholds 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 paragraph must be referred to and settled by arbitration under article 36 (arbitration).
5. This Part does not apply to—
- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by Part 3 of the 1991 Act (street works in England and Wales); or
  - (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.
6. Nothing in this Part 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 8

### Protection for Western Power Distribution (East Midlands) plc

1. The provisions of this Part have effect for the protection of WPD unless otherwise agreed in writing between the undertaker and WPD.
2. In this Part—
- “alternative apparatus” means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner no less efficient than previously;
  - “alternative rights” means all necessary legal easements, consents, or permissions required by WPD to permit or authorise a diversion;
  - “apparatus” means electric lines or electrical plant (in both cases, as defined in the 1989 Act) belonging to or maintained by WPD;
  - “emergency” means the immediate threat of death or injury to persons or of damage to property;
  - “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 on land;
  - “WPD” means Western Power Distribution (East Midlands) plc (company number 02366923).
3. This Part does not apply to apparatus in respect of which the relations between the undertaker and WPD are regulated by Part 3 of the 1991 Act (street works in England and Wales).
4. Despite any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.



5. 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, except in an emergency—

- (a) the apparatus must not be removed under this Part; and
- (b) any right of WPD to maintain that apparatus in that land must not be extinguished,

until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of WPD.

6.—(1) Unless required as a result of an emergency, the undertaker must not interfere with, build over, under or near to any apparatus within the Order land unless otherwise approved in writing by WPD, following a request from the undertaker (including a description and plan of the works), such approval not to be unreasonably withheld or delayed.

(2) If—

- (a) for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land; and
- (b) alternative apparatus or any part of alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus,

the undertaker must use its reasonable endeavours to obtain any alternative rights in other land in which the alternative apparatus is to be constructed.

(3) If the undertaker is not able to obtain the alternative rights required under sub-paragraph (2), the undertaker and WPD must use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require to be constructed in land other than Order land and does not require alternative rights.

(4) If—

- (a) alternative apparatus or any part of alternative apparatus is to be constructed elsewhere than in other land of the undertaker; or
- (b) the undertaker is unable to afford the alternative rights referred to in sub-paragraph (2) and an alternative engineering solution cannot be agreed in accordance in sub-paragraph (3) in the land in which the alternative apparatus or part of alternative apparatus is to be constructed,

WPD 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, except that this obligation does not extend to the requirement for WPD to use its compulsory purchase powers to this end unless WPD elects to do so.

(5) The works must be executed only in accordance with the plans or drawings submitted under sub-paragraph (1) (or sub-paragraph (3), where relevant) and with such reasonable requirements as may be made in accordance with sub-paragraph (6) by WPD for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and WPD is entitled to watch and inspect the execution of the works.

(6) Any requirements made by WPD under sub-paragraph (5) must be made within 21 days beginning with the date on which the plans or drawings under sub-paragraph (1) are submitted to WPD.

(7) 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 and description instead of the plan and description previously submitted, and the undertaker having done so the provisions of this paragraph apply to and in respect of the new plan and description.

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(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency, but in that case it must give to WPD notice as soon as is reasonably practicable and a plan and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (5) in so far as is reasonably practicable in the circumstances.

7.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to WPD on demand all charges, costs and expenses reasonably anticipated or incurred by WPD in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any works referred to in this Part including without limitation any costs reasonably incurred or compensation properly paid in connection with—

- (a) the acquisition of rights or the exercise of statutory powers for the apparatus including without limitation, if WPD elects to use compulsory acquisition powers to acquire any necessary rights under paragraph 6(4), all costs incurred as a result of such action; and
- (b) the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any works referred to in this Part.

(2) WPD must dispose of any apparatus removed under paragraph 6 on receipt of written notice from the undertaker.

(3) If in accordance with this Part and at the request of WPD 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 where it is not necessary as a direct replacement of existing apparatus or to meet the current industry standards and best practice then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, as the case may be, the amount which apart from this sub-paragraph would be payable to WPD by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

8.—(1) Subject to sub-paragraphs (2) and (3), if—

- (a) by reason or in consequence of the construction of any works referred to in this Part;
- (b) in consequence of the construction use, maintenance, or failure of any of the authorised development by or on behalf of the undertaker; or
- (c) in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out the works including without limitation works carried out by the undertaker under this Part (or any subsidence resulting from any of the works),

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 the works) or property of WPD, or there is any interruption in any service provided, or in the supply of any goods, by WPD, the undertaker must—

- (d) bear and pay the documented cost reasonably incurred by WPD in making good the damage or restoring the supply; and

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(e) indemnify WPD for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from WPD by reason or in consequence of the damage or interruption or WPD becoming liable to any third party.

(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 WPD, its officers, servants, contractors or agents.

(3) WPD must give the undertaker reasonable notice of any claim or demand, and no settlement or compromise may be made without the consent of the undertaker which, if it withholds consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**9.—**(1) Any difference or dispute arising between the undertaker and WPD under this Part must, unless otherwise agreed in writing between the undertaker and WPD, be determined by arbitration in accordance with article 36 (arbitration).