

SCHEDULES

SCHEDULE 10

PROTECTIVE PROVISIONS

PART 2

FOR THE PROTECTION OF NATIONAL GRID

Application

4. For the protection of National Grid the following provisions, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

5. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of National Grid Electricity Transmission Plc, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by it;
- (b) in the case of National Grid Gas Plc, any mains, pipes or other apparatus belonging to or maintained by it for the purposes of gas supply;

“commence” means the first carrying out of any works relating to the authorised development and commencement is to be construed accordingly;

“functions” includes powers and duties;

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

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus including construct, use, repair, improve, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc, company number 02366977, and National Grid Gas Plc, company number 02006000, both companies registered at 1 - 3 Strand, London, WC2N 5EH; and

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

6. Except for paragraphs 7 (apparatus in stopped up streets), 9 (acquisition of land), 12 and 13 (retained apparatus: protection), 14 (expenses) and 15 (indemnity) this Schedule does not apply to

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apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up streets

7.—(1) Where any street is stopped up under article 12 (stopping up of streets) and any National Grid apparatus is in the street or accessed by that street National Grid is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street. Any apparatus of National Grid required to be moved by the undertaker must be dealt with under paragraphs 10 and 11 of this Part of this Schedule and not under article 31(2) to (8) (apparatus and rights of statutory undertakers in stopped up streets) regardless of its inclusion in the Order.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 13 (temporary prohibition or restriction of use of streets), National Grid is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

8.—(1) The undertaker, in the case of the powers conferred by article 17 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld or delayed) except in the case of emergency works (as defined in the 1991 Act) in which case the undertaker must use all reasonable endeavours not to obstruct or render less convenient the access to any National Grid apparatus (except, where such powers are exercised over National Grid operational land, where access must never be obstructed or rendered less convenient without the written consent of National Grid).

(2) If by reason of the exercise of the powers conferred by article 17 any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity or gas (as the case may be) by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (3), must—

- (a) make compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by National Grid, by reason of any such damage or interruption.

(3) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workers; and National Grid must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise of it is to be made without first consulting the undertaker and giving them an opportunity to make representations as to the claim or demand.

Acquisition of land

9. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not otherwise than by agreement with National Grid—

- (a) acquire by compulsion from National Grid any right or interest in land (including rights in the subsoil of or the air-space over land) or any of National Grid's apparatus, or impose restrictive covenants affecting land in which National Grid has rights or interests, or enter upon land, or override any wayleave, easement or other rights or interests of National Grid; or
- (b) take temporary possession of any land that is not a highway so as to interfere with any easement, wayleave or other right relating to National Grid's apparatus.

Removal of apparatus

10.—(1) If, in the exercise of the agreement reached in accordance with paragraph 9 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(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 that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 11(1)) the necessary facilities and rights for—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed except that this obligation does not extend to the requirement for National Grid 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 of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

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

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Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed, then the terms and conditions to which those facilities and rights are subject in the matter must be referred to arbitration and, the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection for National Grid Gas Plc

12.—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect (with reference to the guidance specified at sub-paragraph (11)), any apparatus the removal of which has not been required by the undertaker under paragraph 10(2) or otherwise, the undertaker must submit to National Grid Gas Plc a plan.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid Gas Plc under sub-paragraph (1) must be detailed including a method statement and describing—

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

(3) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (1) or (2) applies until National Grid Gas Plc has given written approval of the plan so submitted.

(4) Any approval of National Grid Gas Plc required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
- (b) must not be unreasonably withheld or delayed.

(5) In relation to a work to which sub-paragraph (1) or (2) applies, National Grid Gas Plc may as part of the written approval referred to in sub-paragraph (3) 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.

(6) Works executed under this Order must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (2), as amended from time to time by agreement between the undertaker and National Grid Gas Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by National Grid Gas Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Gas Plc is entitled to watch and inspect the execution of those works.

(7) Where National Grid Gas Plc requires any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid Gas Plc's satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part of it) and National Grid Gas Plc must give notice of such works within 56 days from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid Gas Plc 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 4 to 6 and 9 to 11 apply as if the removal of the apparatus had been required by the undertaker under paragraph 10(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 having done so the provisions of this paragraph apply to and in respect of the new plan.

(10) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid Gas Plc notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraph (5), (6) and (7) in so far as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised by this Order the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

Retained apparatus: protection National Grid Electricity Transmission Plc

13.—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect (with reference to the guidance specified at sub-paragraph (11)), any apparatus the removal of which has not been required by the undertaker under paragraph 10(2) or otherwise, the undertaker must submit to National Grid Electricity Transmission Plc a plan.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid Electricity Transmission Plc under sub-paragraph (1) must be detailed including a method statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, and the positioning of plant;
- (d) the position of all apparatus; and

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- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.
- (3) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (1) or (2) applies until National Grid Electricity Transmission Plc has given written approval of the plan so submitted.
- (4) Any approval of National Grid Electricity Transmission Plc required under sub-paragraph (3) —
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
 - (b) must not be unreasonably withheld or delayed.
- (5) In relation to a work to which sub-paragraph (1) or (2) applies, National Grid Electricity Transmission Plc may as part of the written approval referred to in sub-paragraph (3) 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.
- (6) Works executed under this Order must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (2), as amended from time to time by agreement between the undertaker and National Grid Electricity Transmission Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by National Grid Electricity Transmission Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc is entitled to watch and inspect the execution of those works.
- (7) Where National Grid Electricity Transmission Plc requires any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid Electricity Transmission Plc's satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part of it) and National Grid Electricity Transmission Plc must give notice of such works within 56 days from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).
- (8) If National Grid Electricity Transmission Plc 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 4 to 6 and 9 to 11 apply as if the removal of the apparatus had been required by the undertaker under paragraph 10(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 having done so the provisions of this paragraph apply to and in respect of the new plan.
- (10) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid Electricity Transmission Plc notice as soon as is reasonably practicable and a plan of those works and must—
- (a) comply with sub-paragraph (5), (6) and (7) in so far as is reasonably practicable in the circumstances; and
 - (b) comply with sub-paragraph (11) at all times.
- (11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

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

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 10(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the carrying out of protective works and any necessary works (not otherwise covered by paragraph 16) carried out by National Grid to monitor ground subsidence, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (e) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 39 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess except where it is not possible in the circumstances to obtain the existing type, capacity, or dimensions of apparatus, or to place apparatus 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 is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

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- (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 is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid 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 National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

15.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker or any person employed or authorised by the undertaker in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker must—

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

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

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

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without first consulting the undertaker and considering their representations.

Ground subsidence monitoring scheme in respect of National Grid's apparatus

16.—(1) No works—

- (a) that are near to, or will or may affect (with reference to the guidance specified at paragraph 12(11)) any National Grid Gas Plc apparatus or alternative apparatus; or
- (b) within 100 metres of any National Grid Electricity Transmission Plc apparatus or alternative apparatus

are to commence until a scheme for monitoring ground subsidence (referred to in this paragraph as “the monitoring scheme”) within the Order limits (and beyond if necessary and where the undertaker has sufficient rights to undertake such monitoring or where such rights can be provided by National

Grid) which is capable of interfering with or risking damage to any of National Grid's apparatus has been submitted to and approved in writing by National Grid, such approval not to be unreasonably withheld or delayed.

- (2) The ground subsidence monitoring scheme described in sub-paragraph (1) must set out—
- (a) the apparatus which is to be subject to such monitoring;
 - (b) the extent of land to be monitored;
 - (c) the manner in which ground levels are to be monitored;
 - (d) the timescales of any monitoring activities; and
 - (e) the extent of ground subsidence which, if exceeded, requires the undertaker to submit for National Grid's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (4).

(3) The monitoring scheme required by sub-paragraphs (1) and (2) must be submitted within 56 days prior to the commencement of any works authorised by this Order or comprised within the authorised development. Any requirements of National Grid must be notified within 28 days of receipt of the monitoring scheme. Afterwards the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with National Grid.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") must be submitted to National Grid for written approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with National Grid except that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and may recover any such costs in line with paragraph 14.

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority under Schedule 2 (requirements) the undertaker may submit a revised monitoring scheme or mitigation scheme to National Grid for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with National Grid.

Enactments and agreements

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

Co-operation

18. Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 10(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 12 or 13, 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 National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

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Access

19. If in consequence of the agreement reached in accordance with paragraph 9 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 such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

20. Except for differences or disputes arising under paragraph 10(2), 10(4), 11(1), 12(1) to (3) and (5) to (11) and 13(1) to (3) and (5) to (11), any difference or dispute arising between the undertaker and National Grid under this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be referred to and determined by arbitration in accordance with article 39 (arbitration).