

SCHEDULE 12

Protective provisions

PART 6

Protection of owners and operators at Wilton

Preliminary

1. The provisions of this Part have effect for the benefit of owners and operators in the Wilton Complex⁽¹⁾ and owners of the Wilton Land unless otherwise agreed in writing between the undertaker and the owner or operator in question.

2. In this Part—

“alternative apparatus” means alternative apparatus adequate to serve the owner of the apparatus in question in a manner no less efficient than previously;

“apparatus” means mains, pipes, cables, sewers, drains, ditches, watercourses or other apparatus and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“construction access plan” means a plan identifying how access will be maintained to land in the Wilton Complex during the construction of the authorised project, including—

- (a) any restrictions on access, including the timing of restrictions;
- (b) any alternative accesses or routes of access that may be available to the undertaker using the Wilton Site Roads; and
- (c) details of how the needs and requirements of persons with operations at the Wilton Complex (including their needs and requirements in relation to any programmed works that they have notified to the other operators at the Wilton Complex as at the date when the plan is published) have been taken into account in preparing the plan;

“description”, in relation to works, means a detailed description of the works and includes full detail of any protective measures proposed to be incorporated as part of those works (for example, to safeguard any apparatus the removal of which is not required by the undertaker under paragraph 4(2));

“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;

“maintenance access plan” means a plan identifying how access will be maintained to land in the Wilton Complex during the maintenance of the authorised project, including—

- (a) any restrictions on access, including the timing of restrictions;
- (b) any alternative accesses or routes of access which may be available to the undertaker using the Wilton Site Roads; and
- (c) details of how the needs and requirements of persons with operations at the Wilton Complex (including their needs and requirements in relation to any programmed works that they have notified to the other operators at the Wilton Complex as at the date when the plan is published) have been taken into account in preparing the plan;

“major works” means works by any person requiring the closure, diversion or regulation of any of the Wilton Site Roads;

(1) “Wilton Complex” is defined in article 2(1).

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“operator” means any person who is responsible for the construction, operation, use, inspection, adjustment, alteration, repair, maintenance, renewal, removal or replacement of any apparatus or alternative apparatus in the Wilton Complex, but who is not an owner in relation to the Wilton Land or the Wilton Complex;

“owner” means—

- (a) in relation to the Wilton Land, any person—
 - (i) with an interest in the Wilton Land;
 - (ii) with rights in, on, under or over the Wilton Land;
 - (iii) with apparatus in, on or under the Wilton Land;
- (b) in relation to the Wilton Complex, any owner or occupier in the Wilton Complex;

“Wilton Land” means the Wilton Complex and Plots 42A, 42B, 43A, 43B, 44A, 44B, 63A, 63B, 64, 65, 66, 67A, 67B, 67C, 67D, 67E, 67F, 68, 86 and 87 shown on the land plans;

“Wilton Site Roads” mean any of the roads shown in red on plan 2 (T-MIS-0066-01) of the Wilton protective provisions supporting plans(2), to the extent these are in the Wilton Complex, and includes any part of such a road.

3. Nothing in this Part applies to apparatus in respect of which the relations between the undertaker and the owner are regulated by Part 3 of the 1991 Act.

General, consent and insurance

4.—(1) The undertaker must not in the exercise of the powers conferred by this Order acquire, appropriate, extinguish or suspend any rights in the Wilton Land if the authorised project can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment or suspension.

(2) The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on owners and operators, including any disruption to access and supplies of utilities and other services that are required by them in order to carry out their operations.

5.—(1) The undertaker must not exercise the identified powers—

- (a) in relation to the Wilton Land without the consent in writing of the owner of that land; or
- (b) where the exercise of the identified powers affects apparatus in the Wilton Land that is operated for the benefit of the Wilton Complex, without the consent in writing of the operator in relation to that apparatus.

(2) Where a person is asked to give consent for the purposes of sub-paragraph (1), the consent must not be unreasonably withheld.

(3) If the undertaker considers that consent has been unreasonably withheld, the undertaker may refer the request for consent to an expert appointed under paragraph 24 for determination.

(4) If an owner or operator fails to respond to a request for consent within 30 days after the day on which the request is made, consent is deemed to have been unreasonably withheld, and the undertaker may refer the request for consent to an expert appointed under paragraph 24 for determination.

(5) Except in an emergency, or as otherwise provided in this Part, the undertaker must give at least 30 days’ notice of the proposed exercise of the identified powers to affected owners of the Wilton Land.

(6) In this paragraph, “identified powers” means the powers conferred by the following—

(2) “Wilton protective provisions supporting plans” is defined in article 2(1).

- (a) article 15 (temporary stopping up of streets);
- (b) article 16 (access to works);
- (c) article 18 (discharge of water);
- (d) article 20 (authority to survey and investigate land);
- (e) article 22 (compulsory acquisition of land);
- (f) article 25 (compulsory acquisition of rights);
- (g) article 26 (private rights of way);
- (h) article 28 (rights under or over streets);
- (i) article 29 (temporary use of land for carrying out authorised project);
- (j) article 30 (temporary use of land for maintaining the carrying out authorised project).

6.—(1) Before carrying out any works on any part of the authorised project on the Wilton Land, the undertaker must put in place a policy of insurance with a reputable insurer against consequential loss and damage suffered by owners of the Wilton Land or as may be determined by an expert under paragraph 24, and evidence of that insurance must be provided on request to owners of the Wilton Land.

(2) Not less than 90 days before carrying out any works on any part of the authorised project on the Wilton Land or before proposing to change the terms of the insurance policy, the undertaker must notify the owners of the Wilton Land of details of the terms or cover of the insurance policy that it proposes to put in place including the proposed level of the cover to be provided.

(3) The undertaker must maintain insurance in relation to works or the use of the authorised project affecting owners of the Wilton Land during the operation of the authorised project at the level specified in the notice of proposed insurance.

7. If an owner or operator considers that any proposed exercise by the undertaker of a power under this Order breaches paragraph 4 or 5 or if there is a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 6, before such a power may be exercised—

- (a) the owner or operator may refer the matter to an expert for determination under paragraph 24; and
- (b) the undertaker must not exercise the power concerned until that determination has been provided.

Apparatus

8.—(1) If, in exercise of the powers conferred by this Order, the undertaker acquires any estate, interest or right in any land in which any apparatus is placed, the apparatus must not be removed, and any right to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation and equivalent rights for the alternative apparatus have been granted to the owner or operator of the apparatus.

(2) If, for the purpose of executing any works in, on or under 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 owner or operator in question written notice of the 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 the undertaker must afford to the owner the necessary facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus in other land of the undertaker and subsequently for the maintenance of the apparatus.

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(3) 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 owner or operator in question and the undertaker or in default of agreement settled by an expert appointed under paragraph 24.

(4) The owner or operator in question must, after the alternative apparatus to be provided or constructed has been agreed or determined by an expert under paragraph 24, and after the grant to the owner of any such facilities and rights as are referred to in sub-paragraph (2) and after the expiration of any applicable notice period in respect of the works under the Pipelines Safety Regulations 1996(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.

(5) Despite sub-paragraph (4), if the undertaker gives notice in writing to the owner or operator 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 of the undertaker, that work, instead of being executed by the owner or operator, must be executed by the undertaker without unnecessary delay to an appropriate standard and in a safe manner.

(6) If works are executed by the undertaker in accordance with sub-paragraph (5), the owner or operator of the apparatus must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.

(7) Nothing in sub-paragraph (5) 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 3,000 millimetres of the apparatus, without the written agreement of the owner or operator, such agreement not to be unreasonably withheld.

9.—(1) Where, in accordance with this Part, the undertaker affords to an owner or operator 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 owner or operator in question or in default of agreement determined by an expert under paragraph 24, such terms to be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(2) In settling the terms and conditions in respect of alternative apparatus to be constructed in or along the authorised project, the expert must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised project and for securing any subsequent alterations or adaptations of the alternative apparatus that may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised project for which the alternative apparatus is to be substituted.

(3) 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 expert materially worse than the rights enjoyed by them in respect of the apparatus to be removed, the expert must make such provision for the payment of compensation by the undertaker to the owner or operator as appears to the expert to be reasonable, having regard to all the circumstances of the particular case.

(3) [S.I. 1996/825](#).

10.—(1) Not less than 30 days before commencing the execution of any works of the type referred to in paragraph 8(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, and in all cases where such works are within 3,000 millimetres of any apparatus the removal of which has not been required by the undertaker under that sub-paragraph, the undertaker must submit to the owner or operator in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the owner or operator for the alteration or otherwise for the temporary or permanent protection of the apparatus, or for securing access to it, and the owner or operator must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.

(3) Any requirements made by an owner or operator under sub-paragraph (2) must (except in circumstances where the requirements reasonably arise from the owner or operator watching, monitoring and inspecting those works) be made within 30 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it and, where the works relate to the installation or construction of the authorised project, such requirements may require the protective measures referred to in sub-paragraph (2) to be retained in place at any time that the authorised project is installed.

(4) If an owner or operator, 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, this Part applies as if the removal of the apparatus had been required by the undertaker under paragraph 8(2).

(5) Nothing in this paragraph prevents the undertaker from submitting at any time or from time to time, but in no case less than 30 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) On the reasonable and evidenced request of an owner or operator affected by proposed works, the undertaker must extend the periods in this paragraph by a reasonable time.

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

- (a) must undertake the works in such manner as has regard to the potential lack of suitable temporary or permanent protection of the owner's or operator's apparatus;
- (b) must give to the owner or operator in question, as soon as reasonably practicable, notice and a plan, section and description of the works; and
- (c) must comply with sub-paragraph (2) so far as is reasonably practicable in the circumstances.

11.—(1) Subject to the provisions of this paragraph, the undertaker must pay to an owner or operator the reasonable expenses incurred by the owner or operator in, or in connection with,—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus under any provision of this Part;
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;

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- (c) the survey of any land, apparatus or works, the watching, inspection, superintendence and monitoring of works or the installation or removal of any temporary works in consequence of the exercise by the undertaker of any power under this Order;
- (d) the design, project management, supervision and implementation of works;
- (e) the negotiation and grant of necessary rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus;
- (f) monitoring the effectiveness of any protective measures referred to in paragraph 10(2) and the installation of any additional protective measures reasonably required in order to deal with any deficiency in the expected level of protection afforded by those protective measures;
- (g) any other work or thing reasonably required in consequence of the exercise by the undertaker of any power under this Order or by the service by the undertaker of any notice, plan, section or description,

within a reasonable time of being notified by the owner or operator that it has incurred such expenses.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under this Part, 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,

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 an expert under paragraph 24 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 owner in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) In determining whether the placing of apparatus of a type or capacity or of particular dimensions or the placing of apparatus at a particular depth, as the case may be, are necessary under sub-paragraph (3), regard must be had to current health and safety requirements, current design standards, relevant good practice and process design specification.

(5) 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.

(6) An amount which apart from this sub-paragraph would be payable to an owner or operator in respect of works by virtue of sub-paragraph (1) must, if it confers a financial benefit on the owner or operator by deferment of the time for renewal of the apparatus in the ordinary course of the owner's or operator's business practice, be reduced by the amount that represents that benefit.

12.—(1) Subject to sub-paragraphs (2) and (3), if, by reason or in consequence of the construction of the authorised project or any such works referred to in paragraph 8(2), any damage is caused to

any apparatus (other than apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an owner or operator, or there is any interruption in any service provided by or operations of the owner or operator, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the owner or operator in making good such damage or restoring the supply and operations; and
- (b) make compensation to the owner or operator and any other person whose supply or operations are affected by the interruption for any other expenses, loss, damages, penalty or costs incurred by them,

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 owner or operator, its officers, servants, contractors or agents.

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

13.—(1) The undertaker must not in the exercise of the powers conferred by this Order unreasonably delay or prevent the construction, installation, adjustment, alteration, operation, use, repair, maintenance, renewal, inspection, removal or replacement of apparatus in the Wilton Land.

(2) If an owner or operator considers that the undertaker is in breach of sub-paragraph (1), it may refer the matter to an expert for determination under paragraph 24.

14.—(1) The undertaker must afford to owners of the Wilton Land rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of apparatus in the Wilton Land acquired by the undertaker or affecting the rights of, or permitted under the rights acquired by, the undertaker.

(2) The rights referred to in sub-paragraph (1) must be granted on terms and conditions that are materially no worse than the terms and conditions that apply to similar apparatus affecting the authorised project as may be agreed between the undertaker and the person wishing to construct, adjust, alter, use, repair, maintain, renew, inspect, remove or replace that apparatus in question or in default of agreement determined by an expert under paragraph 24.

(3) In settling the terms and conditions of any grant of rights, regard must be had to the terms and conditions applicable from time to time to the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal or replacement of other apparatus in the Wilton Complex.

Access for construction and maintenance

15.—(1) Before carrying out any construction works affecting access rights over the Wilton Site Roads, the undertaker must prepare a draft construction access plan and publicise and consult on the draft plan with owners and operators in the Wilton Complex.

(2) The undertaker must take account of the responses to consultation referred to in sub-paragraph (1) before approving the construction access plan.

(3) No works affecting access rights over the Wilton Site Roads may commence until 30 days after a copy of the approved construction access plan is served on owners and operators in the Wilton Complex.

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(4) On the reasonable and evidenced request of an owner or operator in the Wilton Complex affected by proposed works, the undertaker must extend the period mentioned in sub-paragraph (3) by a reasonable time.

16.—(1) Before carrying out any maintenance works affecting access rights over the Wilton Complex, the undertaker must prepare a draft maintenance access plan and publicise and consult on the draft plan with owners and operators in the Wilton Complex.

(2) The undertaker must take account of the responses to consultation referred to in sub-paragraph (1) before approving the maintenance access plan.

(3) No works affecting access rights over the Wilton Complex may commence until 30 days after a copy of the approved maintenance access plan is served on owners and operators in the Wilton Complex.

(4) On the reasonable and evidenced request of an owner or operator in the Wilton Complex affected by proposed works, the undertaker must extend the period mentioned in sub-paragraph (3) by a reasonable time.

17.—(1) In preparing a construction access plan under paragraph 15 or a maintenance access plan under paragraph 16, the undertaker must—

- (a) establish the programme for major works in the Wilton Complex and plan the construction or maintenance of the authorised project to prevent (or, if such conflict cannot be reasonable prevented, to minimise) any conflict between the construction or maintenance of the authorised project and the programmed major works; and
- (b) establish where an owner or operator has a reasonable expectation to exercise access rights over particular Wilton Site Roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

(2) Where a reference is made to expert determination under paragraph 24 in relation to any disagreement about a construction access plan, the appointed expert must have regard to—

- (a) whether major works were, at the date of the consultation already programmed to take place;
- (b) the extent to which the authorised project can be accommodated simultaneously with the programmed major works;
- (c) the usual practice in respect of conditions or requirements subject to which authorisation is given by the owner of the Wilton Site Road;
- (d) the undertaker’s programme in respect of the authorised project and the extent to which it is reasonable for it to carry out the authorised project at a different time;
- (e) the availability (or non-availability) of other times during which the authorised project could be carried out;
- (f) the programme in respect of the major works and the extent to which it is reasonable for the owner or operator at the Wilton Complex to carry out the major works at a different time; and
- (g) the financial consequences of the decision on the undertaker and on any owner and operator in the Wilton Complex.

(3) In this paragraph, “programmed”, in relation to works, means works in respect of which the owner of the Wilton Site Roads has been notified of the dates between which the works are programmed to be carried out.

18. In exercising any right of access over any of the Wilton Site Roads, the undertaker must pay to the owner the reasonable expenses incurred by the owner in operating, repairing, maintaining,

renewing, inspecting and replacing the Wilton Site Road together with any perimeter gatehouses and other security serving the Wilton Complex having regard to user, within a reasonable time of being notified by the owner that it has incurred such expenses.

Compliance with requirements, etc. of Wilton Complex

19.—(1) Subject to sub-paragraph (2) in undertaking any works in the Wilton Land or exercising any rights relating to or affecting owners and operators in the Wilton Complex, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the Wilton Complex.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

- (a) introduced after the date on which notice of the works was given; or
- (b) determined by the expert following a determination under paragraph 24 to—
 - (i) create significant engineering, technical or programming difficulties; or
 - (ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority or the police.

Consultation, participation in community groups, co-operation on complaints, etc.

20. Before undertaking any work in the Wilton Land or exercising any rights relating to or affecting the Wilton Land, the undertaker must consult the owners of the Wilton Land.

21. Before undertaking any works in the Wilton Land or exercising any identified powers (as defined in paragraph 5(6)) relating to or affecting owners or operators in the Wilton Complex, the undertaker must participate in any relevant consultation groups operated in the Wilton Complex.

22. Before undertaking any construction works on the Wilton Land or commencing the operation of Work No. 7, where any of these might reasonably be expected to give rise to significantly perceptible effects beyond the Wilton Land in terms of—

- (a) construction or operational noise and vibration management;
- (b) air quality, including dust emissions;
- (c) waste management;
- (d) traffic management and materials storage on site;
- (e) water management (surface water and groundwater); or
- (f) artificial light emissions,

the undertaker must participate in any relevant community environmental liaison group that might from time to time be established between the owners or operators at the Wilton Complex and local residents.

23. The undertaker must co-operate with the owners and operators in the Wilton Complex to respond promptly to any complaints raised in relation to the construction or operation of the authorised project in the Wilton Complex or the traffic associated with the authorised project.

Expert

24.—(1) Except as provided in sub-paragraph (7), article 44 (arbitration) does not apply to this Part.

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(2) Any difference under this Part must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified on the application of either party, with notice to the other, by the local authority.

(3) All parties involved in settling any difference must use best endeavours to do so within 60 days from the date of an expert first being proposed.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing within a specified period;
- (b) permit a party to comment on the submissions made by the other party; and
- (c) give reasons for his or her decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
- (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner;
- (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (i) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 44.