

## SCHEDULE 8

### Protective provisions

## 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.

#### **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(1);

“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

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(1) 1986 c.44.

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- (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.

### **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 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.

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**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.

(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;

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- (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 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

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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.

### **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.