

## SCHEDULE 8

### Protective provisions

## PART 8

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

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

2. In this Part—

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

“alternative rights” means all necessary legal easements, consents, or permissions required by WPD to permit or authorise a diversion;

“apparatus” means electric lines or electrical plant (in both cases, as defined in the 1989 Act) belonging to or maintained by WPD;

“emergency” means the immediate threat of death or injury to persons or of damage to property;

“functions” includes powers and duties;

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

“WPD” means Western Power Distribution (East Midlands) plc (company number 02366923).

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

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

5. If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, except in an emergency—

(a) the apparatus must not be removed under this Part; and

(b) any right of WPD to maintain that apparatus in that land must not be extinguished,

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

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

(2) If—

(a) for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land; and

(b) alternative apparatus or any part of alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus,

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

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

(4) If—

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

WPD must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, except that this obligation does not extend to the requirement for WPD to use its compulsory purchase powers to this end unless WPD elects to do so.

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

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

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

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

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

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

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- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any works referred to in this Part.

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

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

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

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

any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the works) or property of WPD, or there is any interruption in any service provided, or in the supply of any goods, by WPD, the undertaker must—

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

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

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

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