

SCHEDULES

SCHEDULE 12

Article 42

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application

1. For the protection of the undertakers referred to in this Part of this Schedule the following provisions have effect unless otherwise agreed in writing between Network Rail and the undertaker concerned.

2. The provisions of paragraph 1 of Schedule 11 (provisions relating to statutory undertakers etc. on land acquired), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between Network Rail and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Interpretation

4. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(1)) belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories

(1) 1989 c. 29.

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forming part of any such sewer, drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“plans” includes sections, drawings, specifications and method statements; and

“undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(2);
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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

Acquisition of apparatus

5. Regardless of any provision in this Order or anything shown on the deposited plans, Network Rail must not acquire any apparatus otherwise than by agreement.

Alternative apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, Network Rail 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 an undertaker 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 the undertaker in question.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, Network Rail requires the removal of any apparatus placed in that land, it must give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) Any alternative apparatus to be constructed in land of Network Rail under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Network Rail within 21 days of the service of a notice under sub-paragraph (2), or in default of such agreement settled by arbitration in accordance with article 44 (arbitration).

(4) In any case where alternative apparatus is to be provided or constructed under sub-paragraph (2), or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus, Network Rail must, subject to sub-paragraph (5), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of Network Rail and subsequently for the maintenance of that apparatus.

(5) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph (4), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker in question must, on receipt of a written notice to

(2) 1986 c. 44.

that effect from Network Rail, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(6) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (4) or (5), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by Network Rail to be removed under the provisions of this Part of this Schedule.

(7) Regardless of anything in sub-paragraph (6), if Network Rail gives notice in writing to the undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of Network Rail, that work, instead of being executed by the undertaker, must be executed by Network Rail without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(8) Nothing in sub-paragraph (7) authorises Network Rail to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to an undertaker facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between Network Rail and the undertaker in question or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of Network Rail, the arbitrator must—

- (a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or the traffic on the railway; 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 railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by Network Rail in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by Network Rail to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Existing apparatus: protection and access

8.—(1) Not less than 28 days before starting the execution of any of the authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 6(2), Network Rail must submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works are to 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 undertaker for the alteration or otherwise for the

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protection of the apparatus, or for securing access to it, and an officer of the undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written notice to Network Rail of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by Network Rail under paragraph 6(2).

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

(6) Network Rail is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses

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

(2) The value of any apparatus removed under the provisions of this Part of this Schedule (other than apparatus that is re-used as alternative apparatus) is to be deducted from any sum payable under sub-paragraph (1), 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 except where this has been solely due to using the nearest currently available type; 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 Network Rail or, in default of agreement, is not determined by arbitration in accordance with article 44 (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 paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

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(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works under 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 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.

(6) Any dispute as to whether a financial benefit is conferred in accordance with sub-paragraph (5) or as to the amount of such financial benefit which cannot be agreed is to be determined in accordance with article 44 (arbitration).

Damage to apparatus: costs, losses, etc.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised 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 those works) or property of an undertaker or there is any interruption in any service provided or in the supply of any goods, by any undertaker Network Rail must—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker, by reason or in consequence of any such damage or interruption.

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

(3) An undertaker must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of Network Rail 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.

Enactments and agreements

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

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between Network Rail and the operator.

(2) In this Part of this Schedule—

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

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“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽³⁾;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

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

13.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised works or their construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

Network Rail must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—

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

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

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

(4) Any difference arising between Network Rail and the operator under this paragraph is to be referred to and settled by arbitration under article 44 (arbitration).

14. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between Network Rail and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.

15. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between Network Rail and an operator in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.

(3) See section 106.

PART 3

FOR THE PROTECTION OF DRAINAGE AUTHORITIES AND THE ENVIRONMENT AGENCY

16.—(1) The following provisions of this Part of this Schedule apply for the protection of the drainage authority unless otherwise agreed in writing between Network Rail and the drainage authority.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“a category 1 specified work” means so much of any permanent or temporary work or operation authorised by this Order (which includes any dredging and any geotechnical investigations that may be undertaken) as consists of—

- (a) erecting any structure (whether temporary or permanent) in, over or under a main river if the work is likely to affect any drainage work which is or includes a main river or the volumetric rate of flow of water in or flowing to or from any main river;
- (b) the carrying out of any work or alteration or repair of any structure (whether temporary or permanent) in, over or under a main river if the work is likely to affect the flow of water in the main river or to affect any drainage work; or
- (c) any work or operation that is in, on, under, over or within 16 metres of a drainage work which is or includes a main river or is otherwise likely to affect any such drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

“a category 2 specified work” means any of the following—

- (a) erecting any mill dam, weir or other like obstruction to the flow of any ordinary watercourse, or raising or otherwise altering any such obstruction;
- (b) erecting a culvert in any ordinary watercourse;
- (c) altering a culvert in a manner that would be likely to affect the flow of any ordinary watercourse; or
- (d) altering, removing or replacing a structure or feature designated by a local drainage authority under Schedule 1 to the Flood and Water Management Act 2010(4);

“construction” includes execution, placing, altering, replacing, relaying, removal and carrying out excavations in relation to a work, and “construct” and “constructed” are construed accordingly;

“the drainage authority” means—

- (a) in relation to a category 1 specified work, the Agency;
- (b) in relation to a category 2 specified work, the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991(5);

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“the fishery” means any waters containing fish and fish in, such waters and the spawn, habitat or food of such fish;

(4) 2010 c. 29.

(5) 1991 c. 59.

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“a main river” and “ordinary watercourse” have the meanings given by respectively the Water Resources Act 1991 and the Land Drainage Act 1991;

“plans” includes sections, drawings, specifications and method statements; and

“specified work” means a category 1 specified work or a category 2 specified work.

17.—(1) Before beginning to construct any specified work, Network Rail must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the receipt of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority, or determined under article 44 (arbitration).

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

(a) must not be unreasonably withheld;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the receipt of the plans for approval or where further particulars are submitted under paragraph (1) within 2 months of the submission of those particulars, and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work, fishery, water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The drainage authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

18. Without limitation on the scope of paragraph 17, the requirements which the drainage authority may make under that paragraph include conditions requiring Network Rail at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

19.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 18, must be constructed—

(a) without unnecessary delay in accordance with the plans approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of the drainage authority,

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

(2) Network Rail must give to the drainage authority not less than 14 days’ notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Schedule, the drainage authority may by notice in writing require Network Rail at Network Rail’s own expense to comply with the requirements of this Part of this Schedule or (if Network Rail so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove,

alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(4) Subject to sub-paragraph (6) and paragraph 23, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon Network Rail, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from Network Rail.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

(6) If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, Network Rail must provide such alternative means of access to allow the Agency to maintain the flood defence or use the equipment no less effectively than before the obstruction.

20.—(1) Subject to sub-paragraph (5) Network Rail must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by Network Rail for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

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

(3) Subject to sub-paragraph (5) and paragraph 23, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on Network Rail, Network Rail has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure incurred by it in so doing from Network Rail.

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

(5) This paragraph does not apply to—

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

21. Subject to paragraph 23, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by Network Rail to the reasonable satisfaction of the drainage authority and if Network Rail fails to do so, the drainage authority may make good the same and recover from Network Rail the expense incurred by it in so doing.

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22.—(1) Network Rail must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to a fishery is caused, or the Agency has reason to expect that such damage may be caused, the drainage authority may serve notice on Network Rail requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 23, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, Network Rail fails to take such steps as are described in sub-paragraph (2), the drainage authority may take those steps and may recover from Network Rail the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 23, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the drainage authority may take such steps as are reasonable for the purpose, and may recover from Network Rail the reasonable cost of so doing provided that notice specifying those steps is served on Network Rail as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

23. Nothing in paragraphs 19(4), 20(3), 21, 22(3) and (4) authorises the drainage authority to execute works on or affecting an operational railway forming part of Network Rail's network without the prior consent in writing of Network Rail such consent not to be unreasonably withheld or delayed.

24. Network Rail must indemnify the drainage authority in respect of all costs, charges and expenses which the drainage authority may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule; and
- (b) in the inspection of the construction of the specified works or any protective works required by the drainage authority under this Part of this Schedule.

25.—(1) Without affecting the other provisions of this Part of this Schedule, Network Rail must indemnify the drainage authority from all claims, demands, proceedings, costs, charges, penalties, damages, expenses and losses, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of Network Rail, its contractors, agents or employees whilst engaged upon the work.

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

26. The fact that any work or thing has been executed or done by Network Rail in accordance with plans approved by the drainage authority, or to the drainage authority's satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve Network Rail from any liability under the provisions of this Part of this Schedule.

PART 4

PROTECTIVE PROVISION FOR THE HOBSON'S CONDUIT TRUST

Application

27. The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between Network Rail and the Trust.

Interpretation

28. In this Part of this Schedule—

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal or maintenance of that work,

and “construct” and “constructed” are construed accordingly;

“detriment” means any damage to the watercourse, including—

- (a) any obstruction of, or interference with, or hindrance or danger to, any use of the watercourse;
- (b) the erosion of the bed or banks of the watercourse, or the impairment of the stability of any works or lands forming part of the watercourse;
- (c) the deposit of materials or the siltation of the watercourse so as to damage the watercourse;
- (d) the pollution of the watercourse;
- (e) any significant alteration in the water level of the watercourse, or significant interference with the supply of water to it, or drainage of water from it (save to the extent that such alteration or interference was otherwise approved by the Trust);
- (f) any harm to the ecology of the watercourse; and
- (g) any interference with the exercise by any person of rights over the watercourse,

“the engineer” means an engineer appointed by the Trust for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” are to be construed accordingly;

“protective work” means a work constructed under paragraph 32(3)(a);

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 16 metres of the watercourse, or may in any way adversely affect the watercourse;

“the Trust” means the Hobson's Conduit Trust;

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“the watercourse” means Hobson’s Brook and Conduit, and includes any works, lands or premises belonging to the Trust, or under its management or control, that are held or used by the Trust in connection with Hobson’s Brook and Conduit.

Exercise of Powers

29.—(1) Network Rail must not exercise the powers conferred by or under this Order in respect of any watercourse except with the consent of the Trust.

(2) The consent of the Trust under sub-paragraph (1) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions.

30. Network Rail must not use any land or property of the Trust forming part of the watercourse for the passage or siting of vehicles, plant or machinery employed in the construction of a specified work other than—

- (a) with the consent in writing of the engineer whose consent must not be unreasonably withheld; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of detriment; or
 - (ii) in order to avoid or reduce any inconvenience to the Trust, its officers and agents and all other persons lawfully on such land or property,

but nothing in this paragraph applies in relation to anything done in accordance with any approval given by the Trust under paragraph 32.

Survey of watercourse

31.—(1) Before the commencement of the initial construction of any part of the specified work and again following practical completion of the specified work Network Rail must bear the reasonable cost of the carrying out by a qualified engineer (“the surveyor”), to be approved by the Trust and Network Rail, of a survey (including a dip-survey to measure the depth of the watercourse and ecological survey) (“the survey”) of so much of the watercourse and of any land and works of Network Rail in existence at the date of the coming into force of this Order which may provide support for the watercourse as will or may be affected by the specified works.

(2) For the purposes of the survey Network Rail must—

- (a) on being given reasonable notice afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of Network Rail which may provide support for the watercourse as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as the surveyor may reasonably require with regard to such existing works of Network Rail and to the specified works or the method of their construction.

(3) The reasonable costs of the survey must include the costs of any dewatering or reduction of the water level of any part of the watercourse (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part of this Schedule apply with all necessary modifications to any such dewatering or reduction in the water level as though those measures were specified works.

(4) Copies of the report of the survey must be provided to both the Trust and Network Rail at no cost to the Trust.

Notification, approval, protective works

32.—(1) Network Rail must before commencing construction of any specified work including any temporary works supply to the Trust proper and sufficient plans of that work and such further particulars available to it as the Trust may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work are:

- (a) approved in writing by the engineer;
- (b) deemed to have been approved by the engineer pursuant to sub-paragraph (2) below; or
- (c) settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 28 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to the Trust the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective works must be constructed by Network Rail or by the Trust at Network Rail's request with all reasonable dispatch and Network Rail must not commence the construction of a specified work until the engineer has notified Network Rail that the protective works have been completed to the engineer's reasonable satisfaction.

33. Network Rail must give to the engineer 14 days' notice of its intention to commence the construction of any of the specified or protective works (unless otherwise agreed in writing by Network Rail and the Trust), save in the case of an emergency in which case Network Rail must give such notice as may be reasonably practicable.

Carrying out specified works and protective works

34.—(1) Any specified works or protective works must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled in accordance with this Part of this Schedule and with any requirements made under paragraph 32(3);
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable; and
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Trust, its officers and agents and all other persons lawfully using the watercourse, except to the extent that temporary obstruction has otherwise been agreed by the Trust.

(2) Nothing in this Order authorises Network Rail to make or maintain any permanent works in or over the watercourse which will reduce the dimensions of the watercourse other than with the written consent of the Trust.

(3) Following the completion of the construction of the specified works Network Rail must restore the watercourse to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

35. Network Rail must not in the course of constructing a specified work or a protective work or otherwise in connection with those works do or permit anything which may result in the pollution

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of the watercourse or the deposit of materials in it and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

36. Network Rail must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting as the engineer may reasonably require during the construction of the specified or protective works.

Access

- 37.**—(1) Network Rail on being given reasonable notice must—
- (a) at all times allow reasonable facilities to the engineer for access to a specified work during its construction; and
 - (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.
- (2) The Trust on being given reasonable notice must—
- (a) at all times afford reasonable facilities to Network Rail and its agents for access to any works carried out by the Trust under this Part of this Schedule during their construction; and
 - (b) supply Network Rail with such information as it may reasonably require with regard to such works or the method of constructing them and Network Rail must reimburse the Trust's reasonable costs in relation to the supply of such information.

Maintenance of the specified works and protective works

38. If at any time after the completion of a specified work or a protective work, not being a work vested in the Trust, the Trust gives notice to Network Rail informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, Network Rail must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Expenses

- 39.**—(1) Subject to sub-paragraph (2), Network Rail must repay to the Trust all fees, costs, charges and expenses reasonably and properly incurred by the Trust—
- (a) in constructing any protective works reasonably required under paragraph 32(3)(a);
 - (b) in respect of the approval by the engineer of plans submitted by Network Rail and the reasonable supervision by the engineer of the construction or repair of a specified work and any protective works;
 - (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors and other persons whom it is reasonably necessary to appoint for inspecting any watercourse and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction of the specified works or any protective works; and
 - (d) in bringing the specified works or any protective works to the notice of users of the affected watercourse.
- (2) Nothing in this paragraph shall impose any liability on Network Rail with respect to any fees, costs, charges and expenses attributable to the act, neglect, default or omission of the Trust or its servants, contractors or agents and any liability of Network Rail under this paragraph shall be reduced proportionately to the extent to which any fees, costs, charges or expenses are attributable to the act, neglect, default or omission of the Trust or its servants, contractors or agents.

Detriment to the watercourse

40. If any detriment to the watercourse is caused by the construction of the specified works or the protective works carried out by Network Rail, Network Rail (if so required by the Trust) must make good such detriment and pay to the Trust all reasonable and proper expenses to which the Trust may be put, and compensation for any loss which the Trust may sustain, in making good or otherwise by reason of the detriment to the watercourse.

Disputes

41. Any difference arising between Network Rail and the Trust under this Part of this Schedule (other than a difference as to the meaning or construction of the Part of this Schedule) is to be referred to and settled by arbitration in accordance with article 44 (arbitration).

PART 5

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

42. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between Network Rail and Cadent, have effect.

Interpretation

43. In this Part of this Schedule—

“1991 Act” means the New Road and Street Works Act 1991;

“acceptable insurance” means third party liability insurance effected and maintained by any person or body (other than the undertaker) who is undertaking a specified work and who is not a licensed operator under the Railway Act 1993, to a level of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters, such policy shall include (but without limitation)—

- (a) Cadent as a Co-Insured;
- (b) a cross liabilities clause; and
- (c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

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

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

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“commence” and “commencement” include any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“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” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all 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;

“rights” includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised works or activities (including maintenance) undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by Network Rail under sub-paragraph 48(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by Network Rail under sub-paragraph 48(2) or otherwise; or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (Cadent’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of Cadent High pressure Gas pipelines and associated installation requirements for third parties GD/SP/SSW/22”);

“undertaker” means the undertaker as defined in article 2 of this Order.

44.—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between Network Rail and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

- (a) paragraphs 45, 50, 50(10) and 52; and

(b) where sub-paragraph (2) applies, paragraphs 48 and 49.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

45. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary stopping up of streets), Cadent will be 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 it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway.

46. Network Rail must exercise the powers conferred by article 17 (protective works to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld).

47.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, Network Rail may not appropriate or acquire any interest in land or appropriate, acquire, extinguish or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and Network Rail) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and Network Rail in respect of any apparatus laid or erected in land belonging to or secured by Network Rail, Network Rail must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and Network Rail acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of Network Rail to procure or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works or maintenance thereof.

(3) Network Rail and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 50 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ Network Rail must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where Network Rail acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 48 do not apply, Network Rail must, unless Cadent agrees otherwise—

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering Network Rail's title to such acquired land; and
- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register)

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include (with its application to register title to Network Rail's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

48.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 47, Network Rail acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the satisfaction of Cadent and 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, Network Rail requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) Network Rail must afford to Cadent to its satisfaction (taking into account paragraph 49(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

(3) If Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph 49(2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent may, on receipt of a written notice to that effect from Network Rail, take such steps as are reasonable in the circumstances in an endeavour to assist Network Rail in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by Network Rail under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and Network Rail.

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

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

(2) If the facilities and rights to be afforded by Network Rail and agreed with Cadent 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 Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed then the terms and conditions to which those facilities and rights are subject in the matter may be referred to arbitration in accordance with paragraph 56 of this Part of this Schedule and the arbitrator must

make such provision for the payment of compensation by Network Rail to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

50.—(1) Not less than 56 days before the commencement of any specified works (or such lesser period as is agreed by Cadent in writing) Network Rail must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

- (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, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) Network Rail must not commence any specified works until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent given under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and
- (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 56 days of the date of submission of the plan under sub-paragraph (1).

(5) Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

- (a) the plan submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between Network Rail and Cadent; and
- (b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by Network Rail (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent, in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 48(2).

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

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(10) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of Cadent High pressure Gas pipelines and associated installation requirements for third parties SPGD/SP /SSW22” and HSE’s “HS(~G)47 Avoiding Danger from underground services”.

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works (including such an event attributable to its maintenance)—

- (a) Network Rail must implement an appropriate ground mitigation scheme; and
- (b) Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 50(10).

(12) Network Rail is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances and sub-paragraph (10) at all times.

(13) In this paragraph, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

51.—(1) Subject to the following provisions of this paragraph, Network Rail must pay to Cadent on demand, all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the necessary acquisition of rights or the necessary exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 48(3) if it elects to do so; or
 - (ii) exercising any necessary compulsory purchase powers under this Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any necessary diversion work or the provision of any necessary alternative apparatus;
- (c) the necessary 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 necessary protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 50(6).

(2) There will 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 Network Rail or, in default of agreement, is not determined by arbitration in accordance with paragraph 56 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 Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible or appropriate in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by Network Rail.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus will 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 will 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 Cadent in respect of works by virtue of sub-paragraph (1) will, 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 Cadent 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.

52.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works (including works carried out under article 17 (protective works to buildings)) by or on behalf of Network Rail or in consequence of any act or default of Network Rail (or any person employed or authorised by Network Rail) in the course of carrying out such works, including without limitation works carried out by Network Rail 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 or decommissioning for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, Network Rail will—

- (a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

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(2) The fact that any act or thing may have been done by Cadent on behalf of Network Rail or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse Network Rail from liability under the provisions of sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

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

(4) Cadent must give Network Rail reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting Network Rail and considering their representations.

(5) If Network Rail has transferred the benefit of the Order to another undertaking pursuant to Article 31 of the Order no person or body who is not a licensed operator under the Railway Act 1993 must commence construction (or permit the commencement of such construction) of the authorised works on any land owned by Cadent or in respect of which Cadent has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of Cadent's apparatus unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Cadent that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and Cadent has confirmed the same in writing to the undertaker.

53. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between Network Rail and Cadent in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.

54.—(1) Where in consequence of the proposed construction of any part of the authorised works, Network Rail or Cadent requires the removal of apparatus under paragraph 48(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 50, Network Rail must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with Network Rail for that purpose.

(2) Whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

55. If in consequence of any agreement reached in accordance with paragraph 47(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, Network Rail must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

56. Save for differences or disputes arising under sub-paragraphs 48(2), 48(4), 49(1), 52(5) and paragraph 50 any difference or dispute arising between Network Rail and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between Network Rail and Cadent, be determined by arbitration in accordance with article 44 (Arbitration).

57. Notwithstanding article 41 (Service of Notices) any plans submitted to Cadent by Network Rail pursuant to paragraph 50(1) must be sent via email to plantprotection@cadentgas.com copied by e-mail to vicky.cashman@cadentgas.com and sent to the General Counsel Department at Cadent's

registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to Network Rail in writing.

PART 6

FOR THE PROTECTION OF CAMBRIDGESHIRE COUNTY COUNCIL IN RESPECT OF THE GUIDED BUSWAY

Application

58. The provisions of this Part of this Schedule shall have effect unless otherwise agreed in writing between the operator and Network Rail.

59. This Part of this Schedule does not apply to apparatus in respect of which the relations between Network Rail and the operator are regulated by the provisions of Part 3 of the 1991 Act.

Interpretation

60. In this Part of this Schedule—

“approval” in relation to specified works means approval by the engineer appointed by the operator (such approval not to be unreasonably withheld or delayed);

“construction” includes execution, placing, altering, replacing, relaying, removal and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by the operator for the purpose in question;

“guided busway” means a way provided for the use of vehicles which are constructed or adapted to carry more than eight passengers for hire or reward and use a mode prescribed in article 2(e), (f), (g) or (h) of the Transport and Works (Guided Transport Modes) Order 1992(h) or a mode which is track-based or road-based and prescribed in any subsequent order made under s.2 of the 1992 Act;

“guided busway property” means any guided busway belonging to the operator, any works, apparatus and equipment of the operator connected with any such guided busway and any land or premises belonging to or used by the operator for the purposes of any such guided busway, works, apparatus or equipment which also includes any accesses, maintenance tracks, cycleway and/or footpaths which form part of the guided busway property;

“guided busway service” means the service provided by the operator for the carriage of passengers via the guided busway;

“maintaining” means works of maintenance and repair that are material to the structures and safe operation of guided busway property;

“operator” means Cambridgeshire County Council or any other person to whom the operator has disposed of any guided busway pursuant to a statutory power, including article 48 of the Cambridgeshire Guided Busway Order 2005 (S.I. 2005/3523);

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

“specified works” means so much of any of the authorised works as may be situated within 15 metres (measured in any direction) of guided busway property or may in any way adversely affect the guided busway property.

Exercise of Powers

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61.—(1) Network Rail must not exercise the powers conferred by or under this Order in respect of any guided busway property except with the consent of the operator.

(2) Network Rail must not by or under the powers of this Order—

- (a) acquire or enter upon;
- (b) take or use, whether temporarily or permanently;
- (c) acquire any new right over or under; or
- (d) acquire any subsoil of or airspace over,

any guided busway property except with the consent of the operator.

(3) Network Rail must not by or under the powers of this Order extinguish any existing rights of the operator in respect of any third party property, except with the consent of the operator.

(4) Where the operator is asked to give its consent pursuant to sub-paragraphs, (1) (2) or (3), such consent must not be unreasonably withheld but may be given subject to reasonable conditions (or where there is any dispute as to such conditions, subject to such conditions as settled by arbitration in accordance with paragraph 74).

(5) Network Rail must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any guided busway property, unless preventing such access is with the consent of the operator.

Guided busway property: notification, protective works

62.—(1) Subject to sub-paragraph (2), Network Rail must give to the engineer not less than 28 days' notice of its intention to—

- (a) commence the construction of any of the specified works; and
- (b) carry out any works for the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with the guided busway property.

(2) Network Rail is not required to comply with sub-paragraph (1) in a case of emergency but in that case Network Rail must give to the operator notice as soon as is reasonably practicable.

63.—(1) Not less than 28 days before commencing the specified works, Network Rail must submit to the operator proper and sufficient plans of the specified works for the approval of the engineer.

(2) Network Rail must not commence the specified works until the plans of the specified works submitted under sub-paragraph (1) are—

- (a) approved in writing by the engineer;
- (b) deemed to have been approved by the engineer pursuant to sub-paragraph (3) below; or
- (c) settled by arbitration.

(3) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans were provided to the operator the engineer has not notified Network Rail of their disapproval of those plans and the grounds of their disapproval the engineer Network Rail may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 14 days beginning with the date upon which the engineer receives written notice from Network Rail. If by the expiry of the further 14 days the engineer has not intimated approval or disapproval, the engineer will be deemed to have approved the plans as submitted.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the specified works to ensure the safety or stability of guided busway

property or the continuation of safe and efficient operation of any guided busway belonging to the operator (including any relocation or removal of works, apparatus and equipment necessitated by the specified works, or for the comfort and safety of passengers who may be affected by the specified works), and any such protective works as may be reasonably necessary for those purposes must be constructed by the operator or by Network Rail, at the election of the operator, in accordance with paragraphs 64 to 66 and such protective works must be carried out at the expense of Network Rail in either case without unnecessary delay. Network Rail must not commence the construction of the specified works until the engineer has notified Network Rail that the protective works have been completed to their reasonable satisfaction.

(5) The engineer must inspect the protective works and notify Network Rail that the protective works have been completed to their reasonable satisfaction or otherwise, as soon as reasonably practicable after the protective works have been completed.

Carrying out protective works and specified works

64. Any specified works and any protective work specified pursuant to paragraph 63(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 63;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause—
 - (i) as little damage as is reasonably practicable to the guided busway property; and
 - (ii) as little interruption as is reasonably practicable to the guided busway service.

Access

65. Network Rail must on being given reasonable notice (save in the event of an emergency)—

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

66. The operator must on being given reasonable notice (save in the event of an emergency)—

- (a) at all times afford reasonable facilities to Network Rail and its agents for access to any works carried out by the operator under this Part of this Schedule during their construction; and
- (b) supply Network Rail with all such information as it may reasonably require with regard to such works or the method of their construction.

Damage to guided busway property: costs, losses etc.

67.—(1) Network Rail must pay to the operator all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by the operator—

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

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and Network Rail must indemnify and keep indemnified the operator from and against all claims and demands arising out of or in connection with a specified work or a protective work or any such failure, act or omission and the fact that any act or thing may have been done by the operator on behalf of the operator or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision will not (if it was done without negligence on the part of the operator or of any person in its employ or of its contractors or agents) excuse Network Rail from any liability under the provisions of this sub-paragraph.

(2) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of Network Rail.

(3) The sums payable by the undertaker under sub-paragraph 67(1) may include a sum equivalent to the relevant costs that the operator has reasonably incurred in order to ensure the on-going provision of the guided busway service or other local services to provide an equivalent transport connectivity as was provided by the guided busway service along any guided busway which is temporarily or permanently unavailable as a result of any of the matters in sub-paragraph (1) provided always that the operator shall not incur any costs pursuant to this paragraph (3) until it first notifies Network Rail of its proposals to ensure continuity of service in the event the guided busway is temporarily or permanently unavailable (such alternative provision to be reasonable having regard to the extent of time the guided busway will be unavailable) and shall take into account representations made by Network Rail.

(4) Subject to the terms of any agreement between the operator and any provider of the guided busway service regarding the timing or method of payment of the relevant costs in respect of that provider, the operator must promptly pay to each provider the amount of any sums which the operator receives under sub-paragraph (3) which relates to the relevant costs of that provider.

(5) The obligation under sub-paragraph (3) to pay the operator the relevant costs will, in the event of default, be enforceable directly by any provider concerned to the extent that such sums would be payable to that provider under sub-paragraph (4).

(6) Nothing in this paragraph 67 shall impose any liability on Network Rail with respect to any fees, costs, charges and expenses attributable to the act, neglect, default or omission of the operator or its servants, contractors or agents and any liability of Network Rail under this paragraph shall be reduced proportionately to the extent to which any fees, costs, charges or expenses are attributable to the act, neglect, default or omission of the operator or its servants, contractors or agents.

(7) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each provider of the guided busway service as a consequence of any restriction of the use of any guided busway as a result of the construction, maintenance or failure of a specified work or a protective work or any such act or omission as mentioned in sub-paragraph (1); and

“provider of the guided busway service” means any person who is authorised to provide local services using a guided busway pursuant to agreements with the operator.

Expenses

68. Network Rail must repay to the operator all reasonable and proper fees, costs, charges and expenses reasonably incurred by the operator—

- (a) in constructing any part of the specified works on behalf of Network Rail or any protective works under the provision of paragraph 63(4) above including in respect of any permanent protective works, a capitalised sum representing the costs which may be expected to be reasonably and properly incurred by the operator in maintaining and renewing such works;

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- (b) in respect of the employment or procurement of the services of any inspectors, supervisory staff and other persons whom it is reasonably necessary to appoint for inspecting, signalling, monitoring and lighting guided busway property in order to prevent, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction of the protective works or specified works;
- (c) resulting from any speed restrictions which in the reasonable opinion of the engineer are necessary by reason or in consequence of the construction of the protective works or specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason;
- (d) in respect of any additional temporary lighting of guided busway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction of the specified works; and
- (e) in respect of the approval by the engineer of plans submitted by Network Rail and the supervision by the engineer of the construction of the protective works or specified works.

Maintenance of the specified works

69. If at any time after the completion of a specified work, not being a work vested in the operator, the operator gives notice to Network Rail informing it that the state of maintenance of the specified work appears to be such as adversely affects the operation of guided busway property, Network Rail must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as to not adversely affect guided busway property.

Assessment of sums payable

70. In the assessment of any sums payable to the operator under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by the operator if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by Network Rail under this Part of this Schedule or increasing the sums so payable.

Agreements

71. Network Rail and the operator may enter into, and carry into effect, agreements for the transfer to Network Rail of—

- (a) any guided busway property shown on the deposited plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such guided busway property; and
- (c) any rights and obligations (whether or not statutory) of the operator relating to any guided busway property,

and any such agreement may as relevant take effect as a disposal under article 47 of the Cambridgeshire Guided Busway Order 2005, but the consent of the Secretary of State under paragraph (1) of that article will not be required in relation to such a disposal.

Transfer of undertaking

72. Network Rail must give written notice to the operator if any application is proposed to be made by Network Rail for the Secretary of State's consent, under article 31 (powers to transfer undertaking) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

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

Certified documents

73. Network Rail must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 40 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to the operator in a format specified by the operator.

Disputes

74. Any difference arising between Network Rail and the operator under this Part of this Schedule (other than a difference as to the meaning or construction of the Part of this Schedule) is to be referred to and settled by arbitration in accordance with article 44 (arbitration).

PART 7

FOR THE PROTECTION OF SOUTH STAFFORDSHIRE WATER PLC

Application

75. For the protection of SSW the following provisions have effect unless otherwise agreed in writing between Network Rail and SSW.

76. The provisions of paragraph 1 of Schedule 11 (provisions relating to statutory undertakers etc. on land acquired), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

77. This Part of this Schedule does not apply to apparatus in respect of which the relations between Network Rail and SSW are regulated by the provisions of Part 3 of the 1991 Act.

Interpretation

78. In this Part of this Schedule—

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

“apparatus” means—

- (a) mains, pipes or other apparatus belonging to or maintained by SSW for the purposes of water supply;
- (b) any drain or works vested in SSW under the Water Industry Act 1991; and
- (c) any sewer which is so vested in SSW or is the subject of a notice of intention to adopt by SSW given under section 102(4) of that Act or an agreement to adopt by SSW made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“plans” includes sections, drawings, specifications and method statements; and

“SSW” means South Staffordshire Water Plc and includes its successors in title or any successor as a water undertaker within the meaning of the Water Industry Act 1991.

Acquisition of apparatus

79. Regardless of any provision in this Order or anything shown on the deposited plans, Network Rail must not acquire any apparatus otherwise than by agreement.

Alternative apparatus

80.—(1) If, in the exercise of the powers conferred by this Order, Network Rail 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 SSW 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 SSW.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, Network Rail requires the removal of any apparatus placed in that land, it must give to SSW written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed

(3) The proposed position of the alternative apparatus to be provided or constructed is subject to approval by SSW (such approval not to be unreasonably withheld or delayed). In the event that SSW (acting reasonably) considers the proposed position of the alternative apparatus to be unsuitable, SSW shall (acting reasonably) propose an alternative position for the alternative apparatus and must give Network Rail written notice of such alternative position for the alternative apparatus within 28 days of the service of a notice under sub-paragraph (2). Any dispute regarding the alternative apparatus (including but not limited to the proposed position and/or the alternative proposed position) which cannot be agreed between the parties is to be determined in accordance with article 44 (arbitration).

(4) Any alternative apparatus to be constructed in land of Network Rail under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between SSW and Network Rail such agreement to be within 28 days of the service of a notice under sub-paragraph (2) (or within 28 days of service of a notice under sub-paragraph (3) where SSW has proposed an alternative position for the alternative apparatus under sub-paragraph (3) which is acceptable to Network Rail), or in default of such agreement settled by arbitration in accordance with article 44 (arbitration).

(5) In any case where alternative apparatus is to be provided or constructed under sub-paragraphs (2) or (3), or if in consequence of the exercise of any of the powers conferred by this Order SSW reasonably needs to remove any of its apparatus, Network Rail must, subject to sub-paragraph (6), afford to SSW the necessary facilities and rights for the construction of alternative apparatus in other land of Network Rail and subsequently for the maintenance of that apparatus and SSW shall be entitled to recover its reasonable costs incurred in securing such necessary facilities and rights from Network Rail subject to paragraph 83(3) below.

(6) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph (5), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SSW must, on receipt of a written notice to that effect from Network Rail, as soon as reasonably possible use reasonable endeavours (having regard to its statutory

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powers) to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(7) SSW must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44, and after the grant to SSW of any such facilities and rights as are referred to in sub-paragraph (6) or (6), proceed without unreasonable delay (having regard to the operational requirements of SSW) to construct and bring into operation the alternative apparatus.

(8) Regardless of anything in sub-paragraph (7), if Network Rail gives notice in writing to SSW 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 Network Rail, that work, instead of being executed by SSW, must be executed by Network Rail without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of SSW.

(9) Nothing in sub-paragraph (8) authorises Network Rail 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 metres of the apparatus without the written consent of SSW (such consent not to be unreasonably withheld or denied).

(10) In relation to any works which will or may be situated on, over or within 3 metres measured in any direction of any apparatus, the plan to be submitted to SSW under sub-paragraph (1) must be detailed, include a method statement and describe—

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

81.—(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to SSW facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between Network Rail and SSW or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of Network Rail, the arbitrator must—

- (a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or the traffic on the railway; 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 railway for which the alternative apparatus is to be substituted.

(3) In settling those terms and conditions in respect of alternative apparatus to be constructed within 3 metres of any existing apparatus of SSW, the arbitrator must—

- (a) give effect to all reasonable requirements of SSW for ensuring the protection of the existing apparatus and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the existing apparatus; 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 existing apparatus for which the alternative apparatus is to be substituted.

(4) If the facilities and rights to be afforded by Network Rail in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to SSW than the facilities and rights enjoyed by SSW in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by Network Rail to SSW as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Existing apparatus: protection and access

82.—(1) Not less than 42 days before starting the execution of any of the authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 80(2), Network Rail must submit to SSW a plan, section and description of the works to be executed.

(2) Those works are to 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 SSW for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and an officer of SSW is entitled to watch and inspect the execution of those works.

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

(4) If SSW in accordance with sub-paragraph (3) and in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written notice to Network Rail of that requirement, paragraphs 75 to 81 apply as if the removal of the apparatus had been required by Network Rail under paragraph 80(2).

(5) Nothing in this paragraph precludes Network Rail from submitting at any time or from time to time, but in no case less than 42 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) Network Rail is not required to comply with sub-paragraph 82(1) in a case of emergency but in that case it must give to SSW notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses

83.—(1) Subject to the following provisions of this paragraph, Network Rail must repay to SSW the reasonable expenses incurred by SSW in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any of the authorised works.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule (other than apparatus that is re-used by SSW acting reasonably as alternative apparatus) is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

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

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- (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 except where this has been solely due to using the nearest currently available type; 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 Network Rail or, in default of agreement, is not determined by arbitration in accordance with article 44 (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 type, capacity, dimensions, or at the existing depth required to maintain the existing operational requirement, as the case may be, the amount which apart from this paragraph would be payable to SSW by virtue of sub-paragraph (1) is to be reduced by the amount of that excess (save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth).

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

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

(5) An amount which apart from this sub-paragraph would be payable to SSW in respect of works under 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 SSW 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.

(6) Any dispute as to whether a financial benefit is conferred in accordance with sub-paragraph (5) or as to the amount of such financial benefit which cannot be agreed is to be determined in accordance with article 44 (arbitration).

Damage to apparatus: costs, losses, etc.

84.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised 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 those works) or property of SSW or there is any interruption in any service provided or in the supply of any goods, by SSW Network Rail must—

- (a) bear and pay the cost reasonably incurred by SSW in making good such damage or restoring the supply; and
- (b) make reasonable compensation to SSW for any other expenses, loss, damages, penalty or costs incurred by SSW, by reason or in consequence of any such damage or interruption.

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

(3) SSW must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of Network Rail (such consent not to

be unreasonably withheld or delayed) and in the event of any dispute to be settled by arbitration in accordance with article 44 (arbitration).

Enactments and agreements

85. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between Network Rail and SSW in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.