

SCHEDULE 19

Article 47

Protective Provisions

PART 1

PROTECTION FOR ELECTRICITY, GAS,
WATER AND SEWERAGE UNDERTAKERS

Application

1. The provisions of this Part have effect for the protection of the statutory undertakers referred to in this Part, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned.

Interpretation

2. In addition to article 2 (interpretation), the terms in this Part have the following meanings—

“alternative apparatus” means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of a statutory undertaker within sub-paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(1)), belonging to or maintained by the statutory undertaker for the purposes of electricity supply;
- (b) in the case of a statutory undertaker within sub-paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by the statutory undertaker for the purposes of gas supply;
- (c) in the case of a statutory undertaker within sub-paragraph (c) of the definition of that term, mains, pipes or other water apparatus belonging to or maintained by the statutory undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the sewerage 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 forming part of any such sewer, drain or works, and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“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;

“statutory undertaker” means—

(1) 1989 c. 29. The definition of “electric plant” was amended by paragraph 38(3) of Part II of Schedule 6 to the Utilities Act 2000 (c. 27). The definition of “licence holder” was amended by section 13 of the Utilities Act 2000 (c. 27). There are other amendments to the Electricity Act 1989 which are not relevant to this Order.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989; and
- (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;
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991; and
- (e) for the area of the authorised development, and in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

On-street apparatus

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by Part 3 of the 1991 Act.

Acquisition of apparatus

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

Removal of apparatus

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of a statutory undertaker to maintain that apparatus in that land and to gain access to it will not be extinguished until, if so required by the statutory undertaker, alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question 28 days' 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 a statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to paragraph 5(3), afford to the statutory undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on land other than that of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in paragraph 5(2), the statutory undertaker in question, must on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its reasonable endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 84 (arbitration).

(5) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 84 (arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in paragraphs 5(2) and (3), proceed without unnecessary delay to construct and bring into operation

(2) 1986 c. 44.

the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under this Part of this Schedule.

(6) Despite anything in paragraph 5(5), if the undertaker gives notice in writing to the statutory 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, that work, instead of being executed by the statutory undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(7) Nothing in paragraph 5(6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus without the prior approval of the statutory undertaker (such approval not to be unreasonably withheld or delayed).

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a statutory undertaker facilities and rights for the construction and maintenance in land of the undertaker for alternative apparatus in substitution for apparatus to be removed, those facilities and rights will be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 84 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the arbitrator will—

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

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

Retained apparatus: protection

7.—(1) Not less than 28 days before starting the execution of any authorised works authorised by this Order that are near to, or will or may affect, or where construction access is to be taken over, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to the statutory undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under paragraph 7(1) and in accordance with such reasonable requirements as may be made in accordance with paragraph 7(3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(3) Any requirements made by a statutory undertaker under paragraph 7(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 a statutory undertaker in accordance with paragraph 7(3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraph 5 applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph (2) of that paragraph.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, 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) The undertaker is not required to comply with paragraph 7(2) in a case of emergency but in that case it must give to the statutory 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 paragraph 7(2) in so far as is reasonably practicable in the circumstances.

Compensation

8.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that statutory undertaker for any other expenses, loss, demands or proceedings, damages, claims, penalty or costs incurred by the statutory undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in paragraph 8(1) must impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the undertaker reasonable prior written notice of any claim or demand, and no settlement or compromise may be made without the consent of the undertaker.

Expenses

9.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to the statutory undertaker in question the reasonable expenses incurred by that statutory undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus.

(2) The value of any apparatus removed under this Part is to be deducted from any sum payable under paragraph 9(1), that value being calculated after removal.

(3) If in accordance with this Part—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 84 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of paragraph 9(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 is not to 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 is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of paragraph 9(1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker in question 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.

Co-operation

10.—(1) Where, under this Part, the statutory undertaker is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed.

(2) In respect of any specified work or the acquisition of rights under or over or use of the statutory undertaker's property, the statutory undertaker must co-operate with the undertaker with a view to avoiding undue delay.

Agreements

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

PART 2

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS NETWORKS

Application

12. The provisions of this Part have effect for the protection of operators unless otherwise agreed in writing between the undertaker and the operator in question.

Interpretation

13. In addition to article 2 (interpretation), the terms in this Part have the following meanings—
“2003 Act” means the Communications Act 2003;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“conduit system” has the same meaning as in the electronic communications code; and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

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

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

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit 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; and

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

Electronic communications apparatus installed on, under or over any land

14. The exercise of the powers in article 42 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act (undertaker’s works affecting electronic communications apparatus).

Compensation

15.—(1) Subject to paragraphs 15(2) to (3), if as the result of the authorised development or its construction, 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 the property of an operator, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that statutory undertaker for any other expenses, loss, demands or proceedings, damages, claims, penalty or costs incurred by the statutory undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in paragraph 15(1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) Any difference arising between the undertaker and the operator under this paragraph must, unless otherwise agreed in writing between the operator and the undertaker, be referred to and settled by arbitration under article 84 (arbitration).

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

Application

16. This Part does not apply to—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by 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 development.

Co-operation

17. In respect of any specified work or the acquisition of rights under or over or use of the statutory undertaker's property, the statutory undertaker must co-operate with the undertaker with a view to avoiding undue delay.

Enactments and agreements

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

PART 3

NETWORK RAIL

19. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 33 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

20. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

21.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

22.—(1) The undertaker must not exercise the powers conferred by—

- (a) article 27 (authority to survey and investigate the land);
- (b) article 28 (compulsory acquisition of land);
- (c) article 30 (statutory authority to override easements and other rights);
- (d) article 32 (compulsory acquisition of rights and imposition of restrictive covenants);
- (e) article 33 (private rights of way);
- (f) article 35 (acquisition of subsoil and airspace only);
- (g) article 39 (temporary use of land for carrying out authorised development);
- (h) article 41 (temporary use of land for maintaining authorised development);
- (i) article 42 (statutory undertakers);
- (j) or the powers conferred by section 11(3) of the 1965 Act,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or article 42 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

(6) The undertaker shall not place railway property in a position where it cannot be used, or maintained, or is placed at risk of not being capable of use, to run trains safely.

23.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer

and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration in accordance with paragraph 40 of this Part of this Schedule.

(2) 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 have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice (marked as urgent and requiring a response within 28 days) requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

24.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 23(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 23 of this Part of this Schedule;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants,

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

25. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

26. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

27.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 23(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 28(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

28. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 23(3) or in constructing any protective works under the provisions of paragraph 23(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

29.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development (including the operation of tramcars using the tramway comprised in the works) where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 23(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 23(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 23(1) have effect subject to the sub-paragraph.

(6) If at any time and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (7) In the event of EMI having occurred—
- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker’s apparatus in the investigation of such EMI;
 - (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail’s apparatus in the investigation of such EMI; and
 - (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail’s apparatus or such EMI.
- (8) Where Network Rail approves modifications to Network Rail’s apparatus pursuant to sub-paragraphs (5) or (6)—
- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail’s apparatus;
 - (b) any modifications to Network Rail’s apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 24 of this Part of this Schedule.
- (9) To the extent that it would not otherwise do so, the indemnity in paragraph 33(1) of this Part of this Schedule applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail’s apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.
- (10) For the purpose of paragraph 28(a) any modifications to Network Rail’s apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.
- (11) In relation to any dispute arising under this paragraph the reference in article 84 (arbitration) to the Centre of Effective Dispute Resolution shall be read as a reference to the Institution of Engineering and Technology.
- 30.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker 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 not adversely to affect railway property.
- 31.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail’s reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.
- 32.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days’ previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.
- 33.—(1)** The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 46 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—
- (a) by reason of the construction or maintenance of a specified work or the failure thereof;
 - (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;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of the authorised development or access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

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

(2) Network Rail must give the undertaker reasonable written notice of any such claim or demand and no settlement or compromise of such a claim or demand without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

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

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

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

34. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 33 and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

35. In the assessment of any sums payable to Network Rail 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 Network Rail 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 the undertaker under this Part of this Schedule or increasing the sums so payable.

36. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) any railway property shown on the works and land plans and described in the Book of Reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

37. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

38. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 9 (consent to transfer benefit of the Order) of this Order to transfer the benefit of any provision(s) of this Order that affect railway property or a specified work 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)—

- (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.

39. The undertaker 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 82 (certification of plans, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

40. In relation to any dispute arising under this Part of this Schedule (except for those disputes referred to in paragraph 29(11)) the provisions of article 84 (arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

PART 4

FOR THE PROTECTION OF ANGLIAN WATER

41.—(1) For the protection of Anglian Water, the following provisions shall, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

(2) In this Part of this Schedule –

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage and

- (a) any drain or works vested in Anglian Water under The Water Industry Act 1991,
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102 (4) of The Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act,

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

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“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;

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

“standard protection strips” means the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus;

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres,
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres,
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres

unless otherwise agreed.

(3) The undertaker shall not interfere with, build over or near to any Apparatus within the Order land or 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 the standard protection strips unless agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and the existence of this sub-paragraph (3) shall be brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the Undertaker.

(4) The alteration, extension, removal or re-location of any apparatus shall not be implemented until

- (a) any requirement for any permits under the Environmental Permitting Regulations (England and Wales) 2016 or other legislations and any other associated consents which are required are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

(5) In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which Apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until, contingency arrangements have been established to the reasonable satisfaction of Anglian Water in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

(6) Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker shall, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 84 (arbitration).

(7) If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

(8) If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

of such assets will be given to Anglian Water and afforded the same protection of other Anglian Water assets.

(9) If for any reason or in consequence of the construction of any of the works referred to in sub-paragraphs (4) to (6) and (8) above 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 Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker shall,

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water

by reason or in consequence of any such damage or interruption.

(10) Any agreement or approval of Anglian Water required under this Part of this Schedule (including pursuant to sub-paragraphs (3), (4) and (6)):

- (a) must not be unreasonably withheld or delayed; and
- (b) is deemed to have been given if it is neither given nor refused within 28 days (or such other period of time that Anglian Water and the undertaker may agree in writing) of the date of submission of a request for such agreement or approval, or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal.

(11) Any dispute arising between the undertaker and Anglian Water under this Part of this Schedule must be referred to and settled by arbitration under article 84 (arbitration) unless otherwise agreed in writing between the undertaker and Anglian Water.

PART 5

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKERS

Application

42.—(1) For the protection of National Grid referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between National Grid and the undertaker, have effect.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 9 (consent to transfer benefit of the Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 52(3)(b)).

Interpretation

43. In this Part of this Schedule—

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation)—

- (a) a waiver of subrogation and an indemnity to principal clause in favour of the National Grid;
- (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc and National Grid Gas Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc and National Grid Gas Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc and National Grid Gas Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc and National Grid Gas Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to the National Grid);

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

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

“commence” and “commencement” in paragraph 50 of this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (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 National Grid’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 National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“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;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably; and

“specified works” means any of the authorised works or activities 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 the undertaker under paragraph 48(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 48(2) or otherwise.

44. Except for paragraphs 45 (Apparatus of National Grid in stopped up streets), 50 (Retained apparatus: Protection of National Grid), 51 (Expenses) and 52 (Indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up streets

45.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 16 (permanent stopping up of streets, change of status and extinguishment of private means of access), if National Grid has any apparatus that is in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the

undertaker will grant to National Grid, or will procure the granting to National Grid of such rights in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 19 (temporary closure of streets and private means of access), National Grid will be at liberty at all times to take all necessary access across any such stopped up highway and/or 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 as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the temporary stopping up or diversion was in that highway.

Protective works to buildings

46. The undertaker, in the case of the powers conferred by article 26 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid, not to be unreasonably withheld or delayed.

Acquisition of land

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, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement or other interest of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) 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 National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and secure the consent 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.

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

(4) Any agreement or consent granted by National Grid under paragraph 50 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 47(1).

Removal of apparatus

48.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid not less than 28 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 49(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus on other land or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus, on other land of, or secured by, the undertaker.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

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

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under paragraph 49(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid 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 matter may be referred to arbitration in accordance with paragraph 56 (Arbitration) of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: Protection of National Grid

50.—(1) Not less than 56 days before the commencement of any specified works that are near the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid 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;
- (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;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing;—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(7) Works executed under sub-paragraphs (2) or (3) must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid, for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (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 National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 42 to 44 and 47 to 49 apply as if the removal of the apparatus had been required by the undertaker under paragraph 48(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

51.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 48(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
 - (d) the approval of plans;
 - (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
 - (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.
- (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 the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 56 (Arbitration) of this Part of this Schedule to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances 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 the undertaker.
- (4) For the purposes of sub-paragraph (3)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus 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 National Grid 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 National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

52.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 9 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 52; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) National Grid must give the undertaker 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 the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid’s control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid’s apparatus until the following conditions are satisfied—

- (a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and

provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and

- (b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid 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 National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with paragraph 52(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

53. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

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

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

55. If in consequence of the agreement reached in accordance with paragraph 47(1) or of the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

56. Save for differences or disputes arising under paragraph 48(2), 48(4) 49(1), 50 and 51 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 84 (arbitration).

Notices

57. The plans submitted to National Grid by the undertaker pursuant to paragraph 50(1) must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 6

FOR THE PROTECTION OF ESSEX AND SUFFOLK WATER

58. For the protection of Essex and Suffolk Water, the following provisions shall, unless otherwise agreed in writing between the undertaker and Essex and Suffolk Water, have effect.

59. In this Part of this Schedule—

“Authority” has the meaning given in the Water Industry Act 1991;

“alternative apparatus” means alternative apparatus adequate to enable ESW to fulfil its statutory functions in not less efficient a manner than previously;

“apparatus” means any works, mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations (and any accessories to those items) or other apparatus, structures, tunnels, shafts or treatment works belonging to or maintained by ESW for the purposes of water supply and includes a water main, resource main or trunk main and any inspection chambers, wash-out pipes, pumps, ferrules or stopcocks for the main or works (within the meaning of section 219 of the Water Industry Act 1991);

“condition 1” means the satisfaction of the conditions set out in paragraphs 71 and 72;

“condition 2” means the satisfaction of the conditions set out in paragraphs 73, 74 and 75;

“domestic supply” has the meaning given in the Water Industry Act 1991;

“ESW” means Northumbrian Water Limited, t/a Essex and Suffolk Water, company number 02366703, whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;

“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;

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

“the standard protection strips” means strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus—

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres

unless otherwise agreed;

“WINEP process” means the water industry national environment programme process which informs the Authority’s price review process for the period 2025 to 2030 (PR24); and

“WRMP 24” means Water Resource Management Plan 2024.

60. The undertaker must not interfere with, build over or near to any apparatus within the Order land or 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 the standard protection strips unless otherwise agreed in writing with ESW, such agreement not to be unreasonably withheld or delayed, and the existence of this paragraph 60 shall be brought

to the attention of any agent or contractor responsible for carrying out any part of the authorised development on behalf of the undertaker.

61. The alteration, extension, removal or re-location of any apparatus shall not be implemented until—

- (a) any required permits under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation and any other associated consents are obtained; and
- (b) the undertaker has made the appropriate application under section 185 (duty to move pipes, etc.) of the Water Industry Act 1991 as may be required by that provision and has provided a plan and section of the works proposed to ESW and ESW has given the necessary consent or approval under that provision, such agreement not to be unreasonably withheld or delayed,

and such works are to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by ESW for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

62. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until ESW has established to its reasonable satisfaction contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

63. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for ESW to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, with the agreement of ESW, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for ESW, such agreement not to be unreasonably withheld or delayed.

64. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable ESW to maintain or use the apparatus no less effectively than was possible before such obstruction.

65. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to ESW and afforded the same protection as other ESW assets.

66. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 60 to 62 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 ESW, or there is any interruption in any service provided, or in the supply of any goods, by ESW, the undertaker must—

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

67. Any agreement or approval of ESW required under these provisions (including pursuant to paragraph 60, 61 and 63—

- (a) must not be unreasonably withheld or delayed;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) is deemed to have been given if it is neither given nor refused within 42 days of the date of submission of a request for such agreement or approval, or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and
- (c) any request for agreement or approval of ESW required under these provisions must be sent to companysecretary@nwl.co.uk. or such other address as ESW may from time to time appoint instead for that purpose and notify to the undertaker in writing.

68. Any dispute arising between the undertaker and ESW under this Part of this Schedule must be referred to and settled by arbitration under article 84 (arbitration) unless otherwise agreed in writing between the undertaker and ESW.

Water Industry Act 1991

69. Unless otherwise agreed by ESW in its absolute discretion, the undertaker will not serve notice on ESW pursuant to section 41 or any other notice under the Water Industry Act 1991 in so far as it relates to domestic supply (or any equivalent provision with a similar effect consequential on non-household retail exit) in relation to the authorised development and hereby withdraws any such notice which the undertaker may have served on ESW prior to the coming into force of this Order.

Supply of potable water to the authorised development

70. Subject to either condition 1 or condition 2 being satisfied, and subject to the terms and conditions of any agreement made under section 55 Water Industry Act 1991 or determination by the Authority under section 56 Water Industry Act 1991 (or any equivalent provisions with a similar effect), ESW will use its reasonable endeavours to supply the authorised development with—

- (a) an annual average of 2.2 Ml/d of potable water; and
- (b) a peak demand of 2.8 Ml/d of potable water,

as soon as reasonably practicable.

Condition 1

71. The Environment Agency has confirmed the new annual licensed quantities of water for ESW's River Waveney abstraction licence (7/34/19/*S/0108) and the Environment Agency's Waveney Augmentation Groundwater Scheme abstraction licence.

72. Following satisfaction of paragraph 71, ESW, acting reasonably, has confirmed to the undertaker that there is sufficient sustainable water resource in the Northern Central Water Resource Zone to meet forecast demand from its existing customers and forecast demand from its future customers, including demand from the undertaker for the authorised development.

Condition 2

73. New supply schemes have been identified in ESW's Water Resources Management Plan 2024 (WRMP24).

74. Following satisfaction of paragraph 73, the Secretary of State for the Department for Environment, Food and Rural Affairs has granted permission for the publication of ESW's final WRMP24.

75. Following satisfaction of paragraph 74, the Authority has approved the required supply schemes from ESW's approved WRMP24 in its Final Determinations for the 2024 Price Review.

PART 7

FOR THE PROTECTION OF EDF ENERGY NUCLEAR GENERATION LIMITED

Application

76. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and ENGL.

Interpretation

77. In addition to article 2 (interpretation), the terms in this Part have the following meanings—

“ENGL” means EDF Energy Nuclear Generation Limited (company number 03076445);

“NSL” means a nuclear site licence granted by the Office for Nuclear Regulation in exercise of powers contained in sections 1(1), 3 and 4 of the Nuclear Installations Act 1965;;

“Service Media” means pipes, sewers, drains (including drainage ditches) underground and overhead electricity cables, busbars, telecommunications and fibre optic cables, mains, ducts, conduits, gutters, watercourses, wires, other cables, conducting media including any fixings, louvres, cowls and other covers, manholes, junction boxes and other ancillary works and mechanisms;

“Site” means any land within the Order Limits in which ENGL has a freehold or leasehold interest.

Acquisition of Land

78.—(1) Despite any provision of this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not exercise any power—

- (a) to appropriate, acquire, extinguish, interfere with or override any land or interests held by ENGL in the Site;
- (b) to temporarily possess any order land located within any part of the Site;
- (c) to grant new rights or impose restrictive covenants over the Site,

otherwise than by agreement with ENGL.

(2) Despite any provision of this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not exercise any power to acquire, divert, interfere with or relocate apparatus or Service Media in the Site or which serves the Site otherwise than by agreement with ENGL.

(3) Despite any provision of this Order or anything shown on the Land Plans or contained in the Book of Reference, the undertaker must not exercise any power to appropriate, acquire, extinguish, interfere with or override any third-party interest in the Site without ENGL’s written consent, such consent not to be unreasonably withheld or delayed.

(4) Where the undertaker and ENGL agree under this paragraph that any land interest in the Site, or apparatus in the Site, may be acquired by agreement at a time when the NSL remains in force, such acquisition may only take place after the consent of the Office for Nuclear Regulation has first been obtained by ENGL where required in accordance with the NSL.

Apparatus and/or Service Media of ENGL in stopped up streets

79. Without prejudice to the generality of any other protection afforded to ENGL elsewhere in the Order, where any street is stopped up under article 16 (permanent stopping up of streets, change of status, and extinguishment of private means of access), if ENGL has any apparatus and/or Service

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Media in the street or accessed via that street then it is entitled to the same rights in respects of such apparatus and/or Service Media as it enjoyed immediately before the stopping up, diversion or variation and the undertaker must grant to ENGL, or procure the granting to ENGL of equivalent rights to ENGL in respect of such apparatus and/or Service Media and access to it prior to the stopping up, diversion or variation of any such street or highway.

Article 5

80. Neither the undertaker nor ENGL shall exercise any rights it may have to serve notice on the local planning authority pursuant to article 5 (effect of the Order on the Sizewell B relocated facilities permissions) without the written consent of the other.

Discharge or requirements

81. Neither the undertaker or ENGL shall submit details for approval by the local planning authority pursuant to the requirements in Schedule 2 in relation to Work No. 1D or Work No. 1E without the approval of the other.

Service Media plan

82. In respect of any grid works being carried out by National Grid, for the purpose of identifying the Service Media to which the provisions of this Part shall have effect, ENGL must if reasonably requested and to the extent that it is appropriate to do so (acting as a prudent nuclear operator) supply plans to National Grid identifying the location of any Service Media belonging to ENGL.

Enactments and agreements

83. Save to the extent agreed in writing between ENGL and the undertaker, nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and ENGL.

Arbitration

84. Any dispute arising between the undertaker and ENGL under this Part of this Schedule must be referred to and settled by arbitration under article 84 (arbitration) unless otherwise agreed in writing between the undertaker and ENGL.

PART 8

FOR THE PROTECTION OF THE NUCLEAR DECOMMISSIONING AUTHORITY AND MAGNOX LIMITED

Application

85. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and NDA and / or Magnox (as applicable).

Interpretation

86. In addition to article 2 (interpretation), the terms in this Part have the following meanings—
“access road” means the private access road connecting the Magnox Site and NDA Site to the adopted highway (sizewell gap road) shown on the Access Road Plan;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“Access Road Plan” means the document certified as such by the Secretary of State under article 82 (certification of plans, etc) and identified in Schedule 23 for the purposes of this Order;

“alternative installations” means appropriate alternative installations to the satisfaction of NDA and / or Magnox (as applicable) to enable NDA and / or Magnox (as applicable) to fulfil its obligations under the Designating Directions and NSL in a manner not less efficient than previously;

“Designating Directions” mean the nuclear site directions in force in respect of any part of the NDA Site and made by the Secretary of State in exercise of the powers contained in sections 3, 4 and 16 of the Energy Act 2004;

“installation(s)” means any buildings, structures, cooling water infrastructure, services and any other uses and apparatus belonging to or maintained by or used by NDA or Magnox within the Site and / or the Rights Land as identified by NDA or Magnox (as applicable) in accordance with paragraph 99;

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

“Magnox” means Magnox Limited (Company No.02264251) and includes its successors in title, agents, assigns, officers, servants contractors or agents;

“Magnox Rights Land” means that part of the Order Land in which Magnox has a legal or beneficial interest including any easement, liberty, privilege, right, advantage or restrictive covenant but excluding a freehold or leasehold interest;

“Magnox Site” means that part of the Order Land in which Magnox has a freehold or leasehold interest;

“NDA” means the Nuclear Decommissioning Authority, a non-departmental public body established by the Energy Act 2004, and any successor body with responsibility for carrying out the same or similar statutory functions;

“NDA Rights Land” means that part of the Order Land in which NDA has a legal or beneficial interest including any easement, liberty, privilege, right, advantage or restrictive covenant but excluding a freehold or leasehold interest

“NDA Site” means that part of the Order Land in which NDA has a freehold or leasehold interest;

“NSL” means a nuclear site licence granted by the Office for Nuclear Regulation in exercise of powers contained in sections 1(1), 3 and 4 of the Nuclear Installations Act 1965;

“NSL Site” means those parts of the Site in respect of which an NSL is in force from time to time and means the nuclear site licence, as amended from time to time, for the Site granted by the Secretary of State in exercise of powers under sections 1(1), 3 and 4 of the Nuclear Installations Act 1965 on 28th November 1997 to Magnox;

“plans” includes sections, designs, design data, software, drawings, specifications, descriptions (including descriptions of methods of construction), method statements, soil reports, programmes, staging proposals and other supporting information that are reasonably necessary to properly and sufficiently describe the works to be executed;

“Rights Land” means the NDA Rights Land and the Magnox Rights Land;

“Site” means the NDA Site and the Magnox Site;

“specified works” means so much of any of the authorised development as is situated upon, across, under, or over the Site and / or the Rights Land or that are near to, or will or may in any way adversely affect the installations; and

“working days” has the same meaning as in article 2(1) (interpretation) of this Order.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Acquisition of Land and Installations

87.—(1) Despite any provision of this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not—

- (a) exercise any power to acquire any part of the Site, or any right, interest, or installations in the Site, or override any easement or other interest in the Site or extinguish any right or suspend any right of NDA and / or Magnox (as applicable) in the Site or impose any restrictions in the Site otherwise than by agreement with NDA and / or Magnox (as applicable) and—
 - (i) only once the Designating Directions in respect of the relevant part of the NDA Site have been modified or revoked to the satisfaction of NDA by the Secretary of State in accordance with section 5 of the Energy Act 2004;
 - (ii) subject to sub-paragraph (3), only once the NSL in respect of the relevant part of the NSL Site has been surrendered by Magnox or revoked by the Office for Nuclear Regulation; and
 - (iii) where required by NDA and / or Magnox, the undertaker has first provided an alternative installation pursuant to this Part; and
 - (iv) where required by NDA and / or Magnox, the undertaker has first provided an alternative, equivalent right, interest, easement or other interest pursuant to this Part, to ensure the continued decommissioning of the NSL Site and the continued compliance by NDA and / or Magnox of their respective statutory requirements.
- (b) exercise any power to temporarily possess any order land located within the Site otherwise than by agreement with NDA and / or Magnox (as applicable).

(2) Despite any provision of this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not exercise any power to acquire any installations in the Rights Land, or acquire any right or interest of NDA and/or Magnox (as applicable) in the Rights Land, or override any easement or other interest of NDA and / or Magnox (as applicable) in the Rights Land or extinguish any right or suspend any right of NDA and/or Magnox (as applicable) in the Rights Land otherwise than by agreement with NDA and / or Magnox (as applicable) and only:

- (a) where required by NDA and / or Magnox, the undertaker has first provided an alternative installation pursuant to this Part; and /or
- (b) where required by NDA and / or Magnox the undertaker has first provided an alternative, equivalent right, interest, easement or other interest pursuant to this Part,

to ensure the continued decommissioning of the NSL Site and the continued compliance by NDA and / or Magnox of their respective statutory requirements.

(3) Where the undertaker and NDA and / or Magnox (as applicable) agree under this paragraph that any land interest in the NSL Site, or installations in the NSL Site, may be acquired by agreement at a time when the NSL remains in force, such acquisition may only take place after the consent of the Office for Nuclear Regulation has first been obtained by Magnox in accordance with the NSL.

Right of access

88.—(1) The undertaker must not stop up in whole or in part the access road or extinguish in whole or in part any right of NDA and / or Magnox (as applicable) along the access road unless and until:

- (a) an equivalent replacement access has been agreed by the undertaker and NDA and / or Magnox (as applicable) (such agreement not to be unreasonably withheld or delayed); and

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) such replacement access has been put in place to the reasonable satisfaction of NDA and / or Magnox (as applicable) and in accordance with all safety and emergency response requirements; and
- (c) NDA and / or Magnox (as applicable) has/have been granted the same rights in respect of the replacement access as NDA and / or Magnox (as applicable) enjoyed immediately before the stopping up or extinguishment of the access road.

(2) The undertaker must ensure that a full right of access for all emergency, operational and user purposes is maintained at all times by means of the access road or replacement access as set out in sub-paragraph (1).

Removal of Installations and Execution of Specified Works

89. If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any installation is located or placed, that installation must not be removed under this Part or under any other statutory power, and any right of NDA and / or Magnox (as applicable) to use, access, maintain, or renew installations on, in or over that land must not be extinguished until either alternative installations have been constructed in accordance with paragraph 105 of this Part and are in operation to the reasonable satisfaction of NDA and / or Magnox (as applicable) or NDA and / or Magnox (as applicable) provides its written consent (such agreement not to be unreasonably withheld or delayed) to removal without alternative installations being required, constructed or in operation.

90.—(1) Not less than 56 working days before the intended removal of installations and construction of alternative installations or execution of specified works, the undertaker must supply to NDA and / or Magnox (as applicable) plans of the works to be executed for the reasonable approval of NDA and / or Magnox (as applicable) and the removal of installations, construction of alternative installations and / or the execution of specified works must not be commenced except in accordance with plans approved in writing by NDA and / or Magnox (as applicable) or settled by arbitration under article 84 (arbitration) of this Order.

(2) The approval of NDA and / or Magnox (as applicable) must not be unreasonably withheld or delayed and NDA and / or Magnox (as applicable) must indicate its approval or disapproval of the plans submitted under sub-paragraph (1) within—

- (a) a period of 56 working days beginning with the day immediately following that on which the plans are received by NDA and / or Magnox (as applicable);
- (b) a period of 56 working days beginning with the day immediately following that on which the further information has been supplied in full by the undertaker following a request from NDA and / or Magnox (as applicable) under paragraph 91; or
- (c) such longer period than 56 working days in sub-paragraph (a) or (b) as may be agreed in writing by the undertaker and NDA and / or Magnox (as applicable) before the end of such 56 day period.

(3) Any approval of NDA and / or Magnox (as applicable) under this paragraph may be provided subject to such requirements as NDA and / or Magnox (as applicable) considers reasonable.

(4) The removal of installations, construction of alternative installations or the execution of specified works must be executed only in accordance with the plans submitted and approved by NDA and / or Magnox (as applicable) under this paragraph and in accordance with such reasonable requirements of NDA and / or Magnox (as applicable) and NDA and / or Magnox (as applicable) is entitled to watch and inspect the execution of those works, and the undertaker must supply NDA and / or Magnox (as applicable) with any additional information concerning such works as NDA or Magnox may reasonably require.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(5) Where NDA and / or Magnox (as applicable) requires any protective works under sub-paragraph (3) to be carried out either by itself or by the undertaker (whether of a permanent or temporary nature), the protective works must be carried out to NDA and / or Magnox's (as applicable) reasonable satisfaction prior to the carrying out of the specified works.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 working days before commencing the execution of any works, new plans instead of the plans previously submitted, and having done so the provisions of this paragraph apply again in respect of the new plans.

91.—(1) Following receipt of plans under paragraph 90 of this Part, NDA and / or Magnox (as applicable) may request such reasonable further information from the undertaker as is necessary to enable it to consider the plans.

(2) Any request under sub-paragraph (1) must be made within a period of 28 working days beginning with the day immediately following that on which the plans are received by NDA and / or Magnox (as applicable).

Expenses

92. Subject to paragraph 93 of this Part, the undertaker must pay to NDA and / or Magnox (as applicable) the proper and reasonable expenses reasonably incurred by NDA and / or Magnox (as applicable) in, or in connection with, the inspection, alteration or protection of any installations and approvals, provided NDA and / or Magnox (as applicable) has obtained the undertaker's prior approval for any such expenditure (not to be unreasonably withheld or delayed).

93. NDA and / or Magnox (as applicable) is not required to seek the undertaker's prior approval pursuant to paragraph 92 and 95 of this Part for expenditure required in the case of an emergency but in that case NDA and / or Magnox (as applicable) must give to the undertaker notice of any such expenditure as soon as is reasonably practicable.

94. In paragraph 93 of this Part "emergency" means works whose execution at the time when they are executed are 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.

Indemnity

95.—(1) Subject to sub-paragraph (3), if by reason, or in consequence, of the construction, use, existence, operation or failure of any specified works or in consequence of the construction, use, existence, operation, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in any consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, any damage is caused to any installations or property of NDA and / or Magnox (as applicable), or to operations, or there is any interruption in any service provided to NDA and / or Magnox (as applicable) or by NDA and / or Magnox (as applicable), or in the supply of any goods to NDA and / or Magnox (as applicable) or by NDA and / or Magnox (as applicable) or NDA and / or Magnox (as applicable) becomes liable to pay any amount to any third party, the undertaker must—

- (a) subject to paragraph 93, bear and pay on demand the proper and reasonable costs reasonably and properly incurred by NDA and / or Magnox (as applicable) in making good such damage or restoring operations, services or supply provided NDA and / or Magnox (as applicable) has obtained the undertaker's prior approval for any such costs incurred (not to be unreasonably withheld or delayed); and
- (b) indemnify NDA and / or Magnox (as applicable) for any other expenses, loss (whether direct or indirect and including losses of an economic nature), demands, proceedings,

damages, claims penalty or costs incurred by or recovered from NDA and / or Magnox (as applicable) by reason or in consequence of any such damage or interruption or NDA and / or Magnox (as applicable) becoming so liable to any third party as aforesaid other than arising from any default of NDA and / or Magnox (as applicable).

(2) The fact that any act or thing may have been done by either NDA or Magnox on behalf of the undertaker or in accordance with a plan approved by NDA and / or Magnox (as applicable) or in accordance with any requirement of NDA and / or Magnox (as applicable) or its supervision does not (subject to sub-paragraph (3)) excuse the undertaker from liability under sub-paragraph (1) unless NDA and / or Magnox (as applicable) 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 or as otherwise agreed between the undertaker and NDA and / or Magnox (as applicable) in writing.

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

(4) NDA and / or Magnox (as applicable) must give the undertaker reasonable written notice (being not less than 28 working days) of any claim or demand and, subject to sub-paragraph (5), NDA and / or Magnox (as applicable) may decide whether or not to pass conduct of any proceedings necessary to rest the claim or demand to the undertaker.

(5) Where NDA and / or Magnox (as applicable) decides—

- (a) to retain conduct of any proceedings necessary to rest the claim or demand, NDA and / or Magnox (as applicable) must consult with the undertaker and have due regard to the undertakers' representations as to how the proceedings are to be conducted and no settlement, admission of liability or compromise may be made without the consent of the undertaker (not to be unreasonably withheld or delayed);
- (b) to pass conduct of any proceedings necessary to rest the claim or demand to the undertaker, the undertaker must consult with NDA and / or Magnox (as applicable) and have due regard to NDA and / or Magnox's representations (as applicable) as to how the proceedings are to be conducted and no settlement, admission of liability or compromise may be made without the consent of NDA and / or Magnox (as applicable) (not to be unreasonably withheld or delayed).

(6) Neither NDA, Magnox nor the undertaker may make any public statement relating to any claim or demand or any settlement or compromise that may be made in respect of any claim or demand without the consent of NDA, Magnox or the undertaker (as applicable).

(7) NDA and / or Magnox (as applicable) must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(8) NDA and / or Magnox (as applicable) must use its reasonable endeavours to mitigate and to minimise any costs, expenses, losses, demands, and penalties to which the indemnity under this paragraph applies where it is within NDA and / or Magnox (as applicable)'s reasonable ability and control to do so and, if reasonably requested to do so by the undertaker, NDA and / or Magnox (as applicable) must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

96. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and either NDA or Magnox (as applicable) in respect of any installations located at or providing access into the Site or Rights Land on the date on which this Order is made.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Co-operation

97. The undertaker must not exercise any power under this Order which would interfere with the ability for NDA and Magnox to facilitate the decommissioning and delicensing of the NSL Site, and fulfilment of any statutory requirements, unless otherwise agreed in writing between the NDA and / or Magnox (as applicable) and the undertaker.

Arbitration

98. Any dispute arising between the undertaker and NDA and / or Magnox (as applicable) under this Part of this Schedule must be referred to and settled by arbitration under article 84 (arbitration) unless otherwise agreed in writing between the undertaker and NDA and / or Magnox (as applicable).

Installation(s) plan

99. For the purpose of identifying the installations to which the provisions of this Part shall have effect, NDA and / or Magnox (as applicable) must supply plans identifying the location of any buildings, structures, cooling water infrastructure, services, pipelines and any other uses and apparatus belonging to or maintained by or used by NDA or Magnox, such plans to be updated and notified to the undertaker from time to time.

PART 9

FOR THE PROTECTION OF EAST ANGLIA ONE NORTH LIMITED

Application

100. For the protection of EA1N the following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and EA1N.

Interpretation

101. In this Part of this Schedule—

“EA1N” means East Anglia ONE North Limited (company number 11121800);

“EA1N Order Limits Interaction – Offshore Plan” means the document certified as such by the Secretary of State as such under article 82 (certification of plans, etc); and

“EA1N Sizewell Gap Transport Interaction Plan” means the document certified as such by the Secretary of State as such under article 82 (certification of plans, etc).

Interaction at Sizewell Gap

102. The undertaker shall consult with EA1N in the formulation of the proposed method of working and timing of execution of—

- (a) works within the area labelled “transport area of interaction” and shaded orange on the EA1N Sizewell Gap Transport Interaction Plan (Drawing No. SZC-SZ0100-XX-000-DRW-100290); and
- (b) works which may affect the highway within the area labelled “transport area of interaction”,

prior to any works comprised within Work No. 1A or Work No. 1C commencing within the area labelled “transport area of interaction”.

Interaction at Snape Road

103. The undertaker shall consult with EA1N in the formulation of the proposed method of working and timing of execution of works within the area of Work No. 16, prior to Work No. 16 commencing.

Interaction at Friday Street

104. The undertaker shall consult with EA1N in the formulation of the proposed method of working and timing of execution of works within the highway comprised within Work Nos. 11A and 11B and any works which may affect the highway within Work Nos. 11A and 11B, prior to Work Nos. 11A and 11B commencing.

Sizewell C proposed intake infrastructure

105.—(1) Save for urgent reasons of vessel safety and subject to sub-paragraph (2), the undertaker shall not carry out any of the authorised development (including the placement temporary or otherwise of anchors or moorings) within the area labelled “Overlap of Sizewell C Order limits with East Anglia ONE North Order limits” and hatched purple on the EA1N Order Limits Interaction – Offshore Plan (Drawing No. SZC-SZ0100-XX-000-DRW-100288) without having first submitted to and secured approval from EA1N details of the proposed method of working within these areas (such approval not to be unreasonably withheld or delayed) and thereafter the undertaker shall implement the authorised project in full accordance with such approved details.

(2) Nothing in this paragraph shall prevent the passage of vessels within the area specified in sub-paragraph (1) prior to the construction of any works within that location by EA1N at any time.

Acquisition of land

106. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not, to the extent that the exercise of such powers relates to the carrying out of Work Nos. 1A, 1C, 11A, 11B or 16, acquire any land interest or rights or impose restrictive covenants over land belonging to EA1N and may not override or extinguish any easement and/or other rights or interests of EA1N otherwise than by agreement.

Arbitration

107. Any difference or dispute arising between EA1N and the undertaker must, unless otherwise agreed in writing between EA1N and the undertaker, be determined by arbitration in accordance with article 84 (arbitration) of the Order.

PART 10

PROTECTION OF EAST ANGLIA TWO LIMITED

Application

108. For the protection of EA2 the following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and EA2.

Interpretation

109. In this Part of this Schedule—

“EA2” means East Anglia TWO Limited (company number 11121842);

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“EA2 Order Limits Interaction – Offshore Plan” means the document certified as such by the Secretary of State as such under article 82 (certification of plans, etc); and

“EA2 Sizewell Gap Transport Interaction Plan” means the document certified as such by the Secretary of State as such under article 82 (certification of plans, etc).

Interaction at Sizewell Gap

110. The undertaker shall consult with EA2 in the formulation of the proposed method of working and timing of execution of—

- (a) works within the area labelled “transport area of interaction” and shaded orange on the EA2 Sizewell Gap Transport Interaction Plan (Drawing No. SZC-SZ0100-XX-000-DRW-100291); and
- (b) works which may affect the highway within the area labelled “transport area of interaction”,

prior to any works comprised within Work No. 1A or Work No. 1C commencing within the area labelled “transport area of interaction”.

Interaction at Snape Road

111. The undertaker shall consult with EA2 in the formulation of the proposed method of working and timing of execution of works within the area of Work No. 16, prior to Work No. 16 commencing.

Interaction at Friday Street

112. The undertaker shall consult with EA2 in the formulation of the proposed method of working and timing of execution of works within the highway comprised within Work Nos. 11A and 11B and any works which may affect the highway within Work Nos. 11A and 11B, prior to Work Nos. 11A and 11B commencing.

Sizewell C proposed intake infrastructure

113.—(1) Save for urgent reasons of vessel safety and subject to sub-paragraph (2), the undertaker shall not carry out any of the authorised development (including the placement temporary or otherwise of anchors or moorings) within the area labelled “Overlap of Sizewell C Order limits with East Anglia TWO Order limits” and hatched purple on the EA2 Order Limits Interaction – Offshore Plan (Drawing No. SZC-SZ0100-XX-000-DRW-100289) without having first submitted to and secured approval from EA2 details of the proposed method of working within these areas (such approval not to be unreasonably withheld or delayed) and thereafter the undertaker shall implement the authorised project in full accordance with such approved details.

(2) Nothing in this paragraph shall prevent the passage of vessels within the area specified in sub-paragraph (1) prior to the construction of any works within that location by EA2 at any time.

Acquisition of land

114. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not, to the extent that the exercise of such powers relates to the carrying out of Work Nos. 1A, 1C, 11A, 11B or 16, acquire any land interest or rights or impose restrictive covenants over land belonging to EA2 and may not override or extinguish any easement and/or other rights or interests of EA2 otherwise than by agreement.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Arbitration

115. Any difference or dispute arising between EA2 and the undertaker must, unless otherwise agreed in writing between EA2 and the undertaker, be determined by arbitration in accordance with article 84 (arbitration) of the Order.