

SCHEDULES

SCHEDULE 11

PROTECTIVE PROVISIONS

PART 4

FOR THE PROTECTION OF ESSO PETROLEUM COMPANY LIMITED

Application

28. The provisions of this Part of this Schedule have effect for the protection of Esso unless otherwise agreed in writing between the undertaker and Esso.

Interpretation

29. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Esso to fulfil its functions as a pipe-line operator in a manner no less efficient than previously and having regard to Esso’s standards for the construction and operation of a pipeline;

“alternative rights” means new rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of apparatus or alternative apparatus including any restrictions on the landowner and occupiers for the protection of the apparatus or alternative apparatus and to allow Esso to perform its functions in a manner not less efficient than under the existing rights and having regard to Esso’s standards for the construction and operation of a pipeline;

“apparatus” means the pipeline and storage system owned by Esso within or adjacent to the Order limits and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus and includes any ancillary works and apparatus all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers and such legal interest and benefit of property rights and covenants as are vested in Esso in respect of those items and, where the context allows, includes alternative apparatus;

“Esso” means Esso Petroleum Company, Limited and any successor in title;

“existing rights” means the rights and benefits of covenants enjoyed by Esso in land within the Order limits;

“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 all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to describe the works to be executed;

“specified work” means any works that are near to, or will or are likely to affect any apparatus or power supply to any apparatus including—

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- (a) all intrusive or non-intrusive works within 15 metres of any apparatus;
- (b) the crossing of apparatus by other utilities;
- (c) the use of explosives within 400 metres of any apparatus; and
- (d) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of any apparatus,

whether carried out by the undertaker or any third party in connection with the authorised development; and

“works agreement” means an agreement containing sufficient detail as to responsibilities for the design, programming, supervision and carrying out of works under this Part of this Schedule or in connection with the authorised development which affect the apparatus.

Acquisition of apparatus

30.—(1) Despite any provision in this Order or anything shown on the land plans or if the Order covers any interest in any land in which any apparatus is placed or over which existing rights are enjoyed by Esso, the undertaker must not acquire any apparatus or acquire, suspend, extinguish or affect any of the existing rights, otherwise than in accordance with this Part of this Schedule or by agreement with Esso.

(2) Where the undertaker acquires land which is subject to any existing rights and the provisions of paragraph 31 do not apply, the undertaker must retain any notice of the existing rights on the title to the relevant land when registering the undertaker’s title to such acquired land.

Removal of apparatus and rights for alternative apparatus

31.—(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 or over which access to any apparatus is enjoyed or requires that any apparatus is relocated or diverted, that apparatus must not be removed by the undertaker and any right of Esso to maintain and use that apparatus in that land and to gain access to it must not be extinguished until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Esso.

(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 Esso 56 days’ 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 Esso reasonably needs to remove any apparatus) the undertaker must, subject to sub-paragraph (3), afford to Esso the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently grant alternative rights for the maintenance of that apparatus in accordance with paragraph (6).

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford 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, the undertaker must afford to and, if necessary, acquire for the benefit of Esso the necessary facilities and rights for the construction, maintenance and use of the alternative apparatus and access to it.

(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 Esso and the undertaker or in default of agreement settled by arbitration in accordance with article 57 (arbitration).

(5) Esso must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with article 57 (arbitration), and after the grant to Esso of any such facilities and rights as are referred to in sub-paragraph (2), proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the alternative apparatus and subsequently to remove (or if agreed between the parties allow the undertaker to remove) any redundant apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Irrespective of sub-paragraph (5), if the undertaker gives notice in writing to Esso that it desires itself to execute any work, or part of any work in connection with the construction, removal or decommissioning of apparatus in the land of the undertaker or the construction of alternative apparatus, that work, instead of being executed by Esso, must be executed by the undertaker without unnecessary delay under the superintendence, if required, and to the reasonable satisfaction of Esso.

(7) Nothing in sub-paragraph (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 3000 millimetres of the apparatus without Esso's consent unless that apparatus is redundant and disconnected from Esso's remaining system and is more than 3000 millimetres from any live apparatus.

Facilities and rights for alternative apparatus

32.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Esso facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Esso in accordance with this paragraph or in default of agreement settled by arbitration in accordance with article 57 (arbitration).

(2) Alternative rights must be granted before any alternative apparatus is brought into use or any existing rights extinguished.

(3) The undertaker must grant Esso alternative rights by way of a deed of grant of easement, substantially in the form of Esso's precedent from time to time. If any third party is required to be involved for the grant of alternative rights, the undertaker must secure their agreement at its own cost.

(4) Nothing in this Part of this Schedule or contained in the alternative rights requires Esso to divert or remove any alternative apparatus installed in accordance with the provisions of this Part of this Schedule and any other agreement between Esso and the undertaker.

(5) In settling those terms and conditions for the alternative rights in respect of alternative apparatus the arbitrator must give effect to all reasonable requirements of the undertaker and Esso for ensuring the safety and efficient operation of the authorised development and the apparatus respectively.

(6) 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 Esso than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Esso as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

33.—(1) Unless a shorter period is otherwise agreed in writing between the undertaker and Esso, not less than 35 days before commencing any specified work in relation to apparatus the removal of which has not been required by the undertaker under sub-paragraph 31(2) the undertaker must submit to Esso a plan of the works to be executed.

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

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regime; and
- (g) and any other information reasonably required by Esso to assess the works.

(3) The specified work must be executed only in accordance with the plan submitted under sub-paragraph (1) and approved by Esso, and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4) by Esso for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and Esso is entitled to watch and inspect the execution of the specified work and the undertaker must follow any reasonable instructions from Esso for the safety of the apparatus and those working nearby.

(4) Any reasonable requirements made by Esso under sub-paragraph (2) must be made within a period of 21 days (unless a shorter period is otherwise agreed in writing between the undertaker and Esso) beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(5) If Esso in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, this paragraph applies as if the removal of the apparatus had been required by the undertaker under paragraph 31(2) but the undertaker is not required to serve Esso with a new notice under paragraph 31.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time but (unless otherwise agreed in writing between the undertaker and Esso) in no case less than 28 days before commencing any specified work, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(7) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Esso notice of the works it intends to carry out to remedy the emergency together with a plan as soon as is reasonably practicable and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(8) In relation to any works which will or may be situated on, over, under or within 15 metres measured in any direction of apparatus, or (wherever situated) impose any load directly upon the apparatus or involve embankment works within 15 metres of the apparatus, the plan to be submitted to Esso under sub-paragraph (1) must include a material statement describing—

- (a) the exact position of the work;
- (b) the level at which the work is to be constructed or renewed;
- (c) the manner of its construction or renewal;
- (d) the position of the apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to the apparatus.

Cathodic protection testing

34. Where in the reasonable opinion of the undertaker—

- (a) the authorised development might interfere with the existing cathodic protection forming part of any apparatus; or
- (b) any apparatus might interfere with the proposed or existing cathodic protection forming part of the authorised development,

Esso and the undertaker must co-operate in undertaking the tests which the undertaker considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

Expenses

35.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Esso the reasonable costs and expenses incurred by Esso in, or in connection with—

- (a) the inspection, removal, alteration or protection of any apparatus;
- (b) the execution of any works required by this Part of this Schedule including the purchase, installation and commission of alternative apparatus;
- (c) the review and assessment of plans;
- (d) the watching and inspecting the execution of any specified work, any associated works and any works undertaken by third parties as a result of any specified work (including the assessment of plans); or
- (e) imposing reasonable requirements for the protection or alteration of apparatus affected by the authorised development or works as a consequence of the authorised development,

which may reasonably be required in consequence of the execution of any such works as are required under this Part of this Schedule or are authorised by the Order.

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

(3) Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Esso, the undertaker must pay Esso sufficiently in advance to enable Esso to undertake its obligations under this Part of this Schedule in a manner that is neutral to its cashflow provided that in the event that the costs incurred by Esso are less than the amount paid by the undertaker pursuant to this sub-paragraph (3) then Esso must promptly repay any overpayment to the undertaker.

(4) Where reasonably required by either party, in view of the complexity of any proposed works, timescales, phasing or costs, the parties must with due diligence and good faith negotiate a works agreement.

(5) 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 settled by arbitration in accordance with article 57 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Esso by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it

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is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs must be borne by the undertaker.

- (6) For the purposes of sub-paragraph (5)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus;
 - (b) the placing of apparatus that is to Esso's current specification and standards for diversions and protective works must not be treated as a placing of apparatus of better type, greater capacity, greater dimensions or greater depth than those of the existing apparatus; and
 - (c) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

Damage to property and other losses

36.—(1) Subject to the following provisions of this paragraph, the undertaker must make reasonable compensation to Esso—

- (a) for all loss, damage, liability, costs and expenses reasonably suffered or incurred by Esso for which Esso is legally liable as a result of legally sustainable claims brought against Esso by any third party solely arising out of the carrying out of any relevant works;
- (b) for the cost reasonably incurred by Esso in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any relevant works and the authorised development; and
- (c) for the cost reasonably incurred by Esso in stopping, suspending and restoring the supply through its pipe-line and make reasonable compensation to Esso for any other expenses, losses, damages, penalty or costs incurred by Esso by reason or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works and the authorised development.

(2) The fact that any act or thing may have been done by Esso on behalf of the undertaker or in accordance with a plan approved by Esso or in accordance with any requirement of Esso or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Irrespective of anything to the contrary elsewhere in this Part of this Schedule—

- (a) the undertaker and Esso must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense recoverable from the other under this Part of this Schedule; and
- (b) neither the undertaker nor Esso are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this Part of this Schedule or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.

(4) Esso must give to the undertaker reasonable notice of any claim or demand to which this paragraph 36 applies. If Esso agrees (such agreement not to be unreasonably withheld or delayed), the undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. Esso must not compromise or settle any claim or demand or make any admission which might be prejudicial to the claim or demand without the undertaker's consent (such consent not to be unreasonably withheld). Esso must, at the request of the undertaker,

afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing.

(5) Nothing in this Part of this Schedule excludes or limits the liability of the undertaker for death or personal injury resulting from the negligence of the undertaker or any of its officers, employees or agents.

(6) In this paragraph “relevant works” means such of the authorised development as—

- (a) does, will or is likely to affect any apparatus; or
- (b) involves a physical connection or attachment to any apparatus.

Co-operation and reasonableness

37.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker requires the removal of apparatus under this Part of this Schedule or Esso makes requirements for the protection or alteration of apparatus under this Part of this Schedule, the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Esso’s undertaking and Esso must use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) The undertaker and Esso must act reasonably in respect of any given term of this Part of this Schedule and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by this Part of this Schedule it must not be unreasonably withheld or delayed.

Miscellaneous

38. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Esso in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this Part of this Schedule. In the case of any inconsistency, the provisions of this Order, including this Part of this Schedule, prevail.