

## SCHEDULE 12

### Protective provisions

## PART 3

### For the protection of South Eastern Power Networks plc

#### Application

1. For the protection of the undertakers referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and the protected undertaker concerned, have effect.

#### Commencement Information

**11** Sch. 12 Pt. 3 para. 1 in force at 6.8.2014, see [art. 1](#)

#### Interpretation

2. In this Part of this Schedule—

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

“apparatus” in respect of the protected undertaker means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that protected undertaker;

“commence” has the same meaning as in article 2 but for the purposes of this Part of this Schedule any works whatsoever which are near to or may affect apparatus of the protected undertaker shall be included within this definition and for the avoidance of doubt this includes works for the diversion or laying of services;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or 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 the protected undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus;

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

“protected undertaker” means South Eastern Power Networks plc.

#### Commencement Information

**12** Sch. 12 Pt. 3 para. 2 in force at 6.8.2014, see [art. 1](#)

3. Except for paragraphs 4 (apparatus in stopped up streets), and 8 (retained apparatus: protection), this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected undertaker are regulated by the provisions of Part 3 of the 1991 Act.

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**Commencement Information**

**I3** Sch. 12 Pt. 3 para. 3 in force at 6.8.2014, see [art. 1](#)

**Commencement Information**

**I2** Sch. 12 Pt. 3 para. 2 in force at 6.8.2014, see [art. 1](#)

**I3** Sch. 12 Pt. 3 para. 3 in force at 6.8.2014, see [art. 1](#)

**Apparatus of protected undertakers in stopped up streets**

4.—(1) Where any street is stopped up under this Order, any protected undertaker whose apparatus is in the street or accessed via that street shall 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 the protected undertaker legal easements reasonably satisfactory to the specified protected undertaker 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 16 (temporary stopping up of streets), or otherwise under this Order, a protected undertaker shall 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 may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway subject always to the undertaking of works by the undertaker authorised by this Order.

**Commencement Information**

**I4** Sch. 12 Pt. 3 para. 4 in force at 6.8.2014, see [art. 1](#)

**Acquisition of land**

5. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any apparatus or override any easement or other interest of a protected undertaker or acquire any land or other interest of a protected undertaker or create any new rights over the same otherwise than by agreement such agreement not to be unreasonably withheld or delayed.

**Commencement Information**

**I5** Sch. 12 Pt. 3 para. 5 in force at 6.8.2014, see [art. 1](#)

**Removal of apparatus**

6.—(1) If, in the exercise of agreement reached in accordance with paragraph 5 above or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part of this Schedule and any right of a protected undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the protected undertaker in question in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the protected undertaker in question 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a protected undertaker reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the protected undertaker to their satisfaction (taking into account paragraph 7(1) below) the necessary facilities and rights for—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford 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 protected undertaker in question shall, 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 the protected undertaker to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the protected undertaker in question and the undertaker both acting reasonably.

(5) The protected undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected undertaker 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.

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#### **Commencement Information**

**I6** Sch. 12 Pt. 3 para. 6 in force at 6.8.2014, see [art. 1](#)

### **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a protected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and the protected undertaker in question and shall be no less favourable on the whole to the protected undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by the protected undertaker.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected undertaker under sub-paragraph (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 the protected 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 then the matter shall be referred to arbitration and the arbitrator shall make such provision for the payment of compensation by the undertaker to that protected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

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### Commencement Information

**I7** Sch. 12 Pt. 3 para. 7 in force at 6.8.2014, see [art. 1](#)

### Retained apparatus: protection

**8.**—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise, the undertaker shall submit to the protected undertaker in question a plan.

(2) In relation to any works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the protected undertaker under sub-paragraph (1) shall be detailed including a material statement and describing—

- (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; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) The undertaker shall not commence the construction or renewal of any works to which sub-paragraph (2) applies until the protected undertaker has given written approval of the plan so submitted.

(4) Any approval of the protected undertaker required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) shall not be unreasonably withheld or delayed;
- (c) shall be deemed to be granted 14 days after the expiry of the 56 day period if no response to the request for approval has been provided within that initial 56 day period.

(5) In relation to a work to which sub-paragraph (2) applies, the protected undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (4), as amended from time to time by agreement between the undertaker and the protected undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the protected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected undertaker shall be entitled to watch and inspect the execution of those works.

(7) Where the protected undertaker requires any protective works to be carried out either by the protected undertaker itself or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected undertaker's reasonable satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part thereof) and the protected undertaker shall give 56 days' notice of such works from the date of approval of a plan submitted in line with sub-paragraph (1) or (4) (except in an emergency).

(8) If a protected undertaker in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 5 to 7 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case shall the execution of any works commence until 56 days have lapsed following submission of, any 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.

(10) The undertaker shall 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 shall give to the protected undertaker in question notice as soon as is reasonably practicable and a plan of those works and shall comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

#### Commencement Information

**18** Sch. 12 Pt. 3 para. 8 in force at 6.8.2014, see [art. 1](#)

### Expenses

9.—(1) Subject to the following provisions of this paragraph, the undertaker shall repay to a protected undertaker on demand all charges, costs and expenses reasonably incurred by that protected undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that the protected undertaker elects to use compulsory purchase powers to acquire any necessary rights under paragraph 6(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (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 Schedule.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions 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

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(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 42 (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 the protected undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it 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 shall 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 shall 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 shall 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 protected undertaker in respect of works by virtue of sub-paragraph (1) shall, 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 protected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

**Commencement Information**

**19** Sch. 12 Pt. 3 para. 9 in force at 6.8.2014, see [art. 1](#)

**10.**—(1) The undertaker, in the case of the powers conferred by this Order, shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected undertaker and subject to sub-paragraphs (2) and (3), if by reason or in consequence of the execution of any works in, on, under or over any land purchased, held, appropriated or used under this Order, 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 protected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any protected undertaker, the undertaker must bear and pay the cost reasonably incurred by that protected undertaker in making good such damage or restoring the supply, and must—

- (a) make reasonable compensation to that protected undertaker for any other expenses, loss, damages, penalty or costs incurred by the protected undertaker; and
- (b) indemnify the protected undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or incurred by, the protected undertaker,

by reason or in consequence of any such damage or interruption; and the fact that any act or thing may have been done by the protected undertaker on behalf the undertaker or in accordance with plans approved by the protected undertaker or in accordance with any requirement of the protected undertaker or under its supervision does not, subject to sub-paragraph (2), excuse the undertaker from any liability under the provisions of this paragraph.



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

(3) A protected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise 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.

**Commencement Information**

**I10** Sch. 12 Pt. 3 para. 10 in force at 6.8.2014, see [art. 1](#)

**Commencement Information**

**I9** Sch. 12 Pt. 3 para. 9 in force at 6.8.2014, see [art. 1](#)

**I10** Sch. 12 Pt. 3 para. 10 in force at 6.8.2014, see [art. 1](#)

**Enactments and agreements**

**11.** Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a protected undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**Commencement Information**

**I11** Sch. 12 Pt. 3 para. 11 in force at 6.8.2014, see [art. 1](#)

**Co-operation**

**12.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or a protected undertaker requires the removal of apparatus under paragraph 6(2) or a protected undertaker makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of the protected undertaker's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and the protected undertaker shall co-operate with each other for those purposes.

**Commencement Information**

**I12** Sch. 12 Pt. 3 para. 12 in force at 6.8.2014, see [art. 1](#)

**Access**

**13.** If in consequence of an agreement reached in accordance with paragraph 5 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

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**Commencement Information**

**I13** Sch. 12 Pt. 3 para. 13 in force at 6.8.2014, see [art. 1](#)

**Arbitration**

**14.** Save for differences or disputes arising under paragraph 6(2), 6(4), 7(1) and 8 any difference or dispute arising between the undertaker and a protected undertaker under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected undertaker, be determined by arbitration in accordance with article 42 (arbitration).

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**Commencement Information**

**I14** Sch. 12 Pt. 3 para. 14 in force at 6.8.2014, see [art. 1](#)



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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 Pt. 3 para. 15(1) substituted by [S.I. 2021/535 art. 5\(a\)](#)
- Sch. 1 Pt. 3 para. 15(2) substituted by [S.I. 2021/535 art. 5\(b\)](#)