

## SCHEDULES

### SCHEDULE 12 **E+W+S**

Article 40

#### Protective provisions

### PART 1 **E+W+S**

#### Protection for Environment Agency and drainage authorities

1.—(1) The following provisions apply for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

(2) In this Part of this Schedule—

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” are construed accordingly;

“drainage authority” means in relation to an ordinary water course the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991 and in relation to a main river or any sea defence work means the Environment Agency;

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

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

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

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to affect any drainage work.

#### Commencement Information

**II** Sch. 12 para. 1 in force at 31.12.2014, see [art. 1](#)

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

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority, or determined under paragraph 10.

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

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within two months of the submission of the plans for approval, or submission of further particulars if required by

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the drainage authority under sub-paragraph (1), and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

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

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

**Commencement Information**

**I2** Sch. 12 para. 2 in force at 31.12.2014, see [art. 1](#)

**3.** Without limiting the scope of paragraph 2, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

**Commencement Information**

**I3** Sch. 12 para. 3 in force at 31.12.2014, see [art. 1](#)

**4.—(1)** Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 3, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the drainage authority,

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

(2) The undertaker must give to the drainage authority not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than seven days after the date on which it is brought into use.

(3) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the drainage authority may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make

reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the undertaker.

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

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**Commencement Information**

**I4** Sch. 12 para. 4 in force at 31.12.2014, see [art. 1](#)

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

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

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

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

(5) This paragraph does not apply to—

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

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**Commencement Information**

**I5** Sch. 12 para. 5 in force at 31.12.2014, see [art. 1](#)

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

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**Commencement Information**

**16** Sch. 12 para. 6 in force at 31.12.2014, see [art. 1](#)

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

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

**Commencement Information**

**17** Sch. 12 para. 7 in force at 31.12.2014, see [art. 1](#)

8.—(1) Without prejudice to the other provisions of this Part of this Schedule, the undertaker must indemnify the drainage authority from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such lands; and where the drainage authority is the Environment Agency inadequate water quality in any watercourse or other surface waters or in any groundwater, which is caused by the construction of any of the specified works or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

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

**Commencement Information**

**18** Sch. 12 para. 8 in force at 31.12.2014, see [art. 1](#)

9. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

**Commencement Information**

**19** Sch. 12 para. 9 in force at 31.12.2014, see [art. 1](#)

10. Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 41 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Energy and Climate Change acting jointly on a reference to them by the undertaker or the drainage authority, after notice in writing by one to the other.

**Commencement Information**

**I10** Sch. 12 para. 10 in force at 31.12.2014, see [art. 1](#)

**PART 2** **E+W+S**

**Protection for Network Rail Infrastructure limited**

**11.** The following 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 25, any other person on whom rights or obligations are conferred by that paragraph.

**Commencement Information**

**I11** Sch. 12 para. 11 in force at 31.12.2014, see [art. 1](#)

**12.** 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 his powers under section 8 of the Railways Act 1993<sup>(1)</sup>;

“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<sup>(2)</sup>) 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 Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

“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.

(1) 1993 c.43.

(2) 2006 c.46.

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**Commencement Information**

**I12** Sch. 12 para. 12 in force at 31.12.2014, see [art. 1](#)

**13.**—(1) Where under this Part of this Schedule Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement 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 its 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.

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**Commencement Information**

**I13** Sch. 12 para. 13 in force at 31.12.2014, see [art. 1](#)

**14.**—(1) The undertaker must not exercise the powers conferred by article 13 (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act (powers of entry) 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 (extinguishment of rights of statutory undertakers and electronic code communications operators — preliminary notices), or article 25 (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 any railway property except with the consent of Network Rail.

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

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**Commencement Information**

**I14** Sch. 12 para. 14 in force at 31.12.2014, see [art. 1](#)

**15.**—(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.

(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 disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice 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 is 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 with all reasonable dispatch 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 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 with all reasonable dispatch 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 his reasonable satisfaction.

#### Commencement Information

**I15** Sch. 12 para. 15 in force at 31.12.2014, see [art. 1](#)

**16.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 15(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 15;
- (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 is 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.

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(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, 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.

**Commencement Information**

**I16** Sch. 12 para. 16 in force at 31.12.2014, see [art. 1](#)

**17.** 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 the engineer may reasonably require with regard to a specified work or the method of constructing it.

**Commencement Information**

**I17** Sch. 12 para. 17 in force at 31.12.2014, see [art. 1](#)

**18.** 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.

**Commencement Information**

**I18** Sch. 12 para. 18 in force at 31.12.2014, see [art. 1](#)

**19.—**(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 may assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 15(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 20(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.

**Commencement Information**

**I19** Sch. 12 para. 19 in force at 31.12.2014, see [art. 1](#)

**20.** 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 15(3) or in constructing any protective works under the provisions of paragraph 15(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, signalmen, watchmen and other persons whom it may 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;
- (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.

**Commencement Information**

**I20** Sch. 12 para. 20 in force at 31.12.2014, see [art. 1](#)

**21.—(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 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 15(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 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 15(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 selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 15(1) has effect subject to this sub-paragraph.
- (6) If at any time prior to the commencement of commercial operation of the authorised development 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.
- (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 16.
- (9) To the extent that it would not otherwise do so, the indemnity in paragraph 25(1) 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 20(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 41 (arbitration) to an arbitrator to be agreed is to be read as a reference to an arbitrator being a member of the Institution of Electrical Engineers to be agreed.

**Commencement Information**

**I21** Sch. 12 para. 21 in force at 31.12.2014, see [art. 1](#)

**22.** 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.

**Commencement Information**

**I22** Sch. 12 para. 22 in force at 31.12.2014, see [art. 1](#)

**23.** 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.

**Commencement Information**

**I23** Sch. 12 para. 23 in force at 31.12.2014, see [art. 1](#)

**24.** 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.

**Commencement Information**

**I24** Sch. 12 para. 24 in force at 31.12.2014, see [art. 1](#)

**25.—(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 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 of them; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

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 plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision must not (if it was done without negligence on the part of Network

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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 notice of any such claim or demand and no settlement or compromise of such a claim or demand may be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) must 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 may, 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 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.

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**Commencement Information**

**I25** Sch. 12 para. 25 in force at 31.12.2014, see [art. 1](#)

**26.** 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 25) 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).

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**Commencement Information**

**I26** Sch. 12 para. 26 in force at 31.12.2014, see [art. 1](#)

**27.** 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.

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**Commencement Information**

**I27** Sch. 12 para. 27 in force at 31.12.2014, see [art. 1](#)

**28.** 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.

**Commencement Information**

**I28** Sch. 12 para. 28 in force at 31.12.2014, see [art. 1](#)

**29.** The undertaker must give written notice to Network Rail where any application is proposed to be made by the undertaker for the Secretary of State’s consent under article 34 (transfer of benefit of Order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (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.

**Commencement Information**

**I29** Sch. 12 para. 29 in force at 31.12.2014, see [art. 1](#)

**30.** 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 39 (certification of plans etc), provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

**Commencement Information**

**I30** Sch. 12 para. 30 in force at 31.12.2014, see [art. 1](#)

## PART 3 **E+W+S**

### Protection for operators of electronic communications code networks

**31.**—(1) For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker and the operator, have effect.

(2) In this Part of this Schedule—

“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;

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

“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;

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“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.

#### Commencement Information

**I31** Sch. 12 para. 31 in force at 31.12.2014, see [art. 1](#)

**32.** Paragraph 23 of Schedule 2 to the Telecommunications Act 1984<sup>(3)</sup> (which provides a procedure for certain cases where works involve the alteration of electronic communications apparatus), applies in relation to the exercise of the powers of article 25 (statutory undertakers).

#### Commencement Information

**I32** Sch. 12 para. 32 in force at 31.12.2014, see [art. 1](#)

**33.—**(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from that development—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—
  - (i) make reasonable compensation to an operator for loss sustained by it; and
  - (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(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 an operator, its officers, servants, contractors or agents.

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

**I33** Sch. 12 para. 33 in force at 31.12.2014, see [art. 1](#)

**34.** This Part of this Schedule does not apply to any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act.

#### Commencement Information

**I34** Sch. 12 para. 34 in force at 31.12.2014, see [art. 1](#)

(3) 1984 c.12.

## PART 4 **E+W+S**

### For the protection of utility undertakers

**35.** For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned, have effect.

#### Commencement Information

**I35** Sch. 12 para. 35 in force at 31.12.2014, see [art. 1](#)

**36.** In this Part of this Schedule—

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

“apparatus” means—

in the case of an electricity undertaker, electric lines or electrical plant (as defined in the 1989 Act) belonging to or maintained by that undertaker;

(a) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(b) in the case of a water undertaker—

(i) mains, pipes or other apparatus belonging to, or maintained by, the water undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991;

(c) 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 includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“utility undertaker” means—

(a) any licence holder within the meaning of Part 1 of the 1989 Act;

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(4);

(c) a water undertaker within the meaning of the Water Industry Act 1991; and

(4) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

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(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised works, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained but in each case does not include Anglian Water Services Limited, Centrica Plc, VPI Immingham LLP or C.GEN Killingholme Limited.

**Commencement Information**

**I36** Sch. 12 para. 36 in force at 31.12.2014, see [art. 1](#)

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

**Commencement Information**

**I37** Sch. 12 para. 37 in force at 31.12.2014, see [art. 1](#)

**38.—(1)** Regardless of any provision in this Order or anything shown on the land plans the undertaker must not acquire any apparatus other than by agreement.

(2) The undertaker must not in the exercise of the powers of this Order acquire any right over, or occupy or use, all or any part of the electricity sub-station within the land shown numbered 408 on the land plans, without the consent of the utility undertaker responsible for its operation.

(3) Consent for the purpose of sub-paragraph (2) is not to be unreasonably withheld but may be granted subject to reasonable conditions.

**Commencement Information**

**I38** Sch. 12 para. 38 in force at 31.12.2014, see [art. 1](#)

**39.—(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 utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility 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 utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and for the subsequent 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 utility undertaker in question must, on receipt of a written notice



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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 41, and after the grant to the utility 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.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work to which this sub-paragraph applies, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Sub-paragraph (6) applies to any part of any work necessary in connection with construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land of the undertaker.

(8) 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 300 millimetres of the apparatus.

#### **Commencement Information**

**I39** Sch. 12 para. 39 in force at 31.12.2014, see [art. 1](#)

**40.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility 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 are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

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

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the electricity generating station 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 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 utility undertaker in question than the facilities and right 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

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the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### Commencement Information

**I40** Sch. 12 para. 40 in force at 31.12.2014, see [art. 1](#)

**41.**—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 39(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 39(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

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

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

(4) If a utility undertaker in accordance with sub-paragraph (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, paragraphs 39 and 40 apply as if the removal of the apparatus had been required by the undertaker under paragraph 39(2).

(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 sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonable practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

#### Commencement Information

**I41** Sch. 12 para. 41 in force at 31.12.2014, see [art. 1](#)

**42.**—(1) If in consequence of the exercise of the powers conferred by 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 the utility undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

(2) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, 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 paragraph 39(2).

(3) The 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 (2), that value being calculated after removal.

(4) 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,

and the placing of apparatus of that type or capacity or 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 41 (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 utility undertaker in question by virtue of sub-paragraph (2), is to be reduced by the amount of that excess.

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

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

(6) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (2) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on the utility 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

**I42** Sch. 12 para. 42 in force at 31.12.2014, see [art. 1](#)

**43.**—(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 39(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 utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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

(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 utility undertaker, its officers, servants, contractors or agents.

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

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**Commencement Information**

**I43** Sch. 12 para. 43 in force at 31.12.2014, see [art. 1](#)

**PART 5** **E+W+S**

For the protection of Associated British Ports

**44.** In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material which constitutes an impediment to navigation

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, (including for the avoidance of doubt the removal of the electrical circuits comprised in Work No. 6), and “construct” and “constructed” are to be construed accordingly;

“erosion” means any erosion of the bed or banks of the river Humber or of any jetty or other structure of whatever nature;

“plans” includes sections, descriptions, drawings and specifications; and

“specified work” means so much of Work No. 6 and any associated development or ancillary works as are within A. B. Port’s jurisdiction.

**Commencement Information**

**I44** Sch. 12 para. 44 in force at 31.12.2014, see [art. 1](#)

**45.** For the protection of A. B. Ports the following provisions have effect unless otherwise agreed in writing between the undertaker and A. B. Ports.

**Commencement Information**

**I45** Sch. 12 para. 45 in force at 31.12.2014, see [art. 1](#)

**46.** The undertaker must not under the powers of this Order acquire land or acquire new rights over land held by A. B. Ports for the purpose of its statutory undertaking without the consent of A. B. Ports, which consent must not be unreasonably withheld but may be given subject to reasonable conditions.

**Commencement Information**

**I46** Sch. 12 para. 46 in force at 31.12.2014, see [art. 1](#)

**47.—(1)** Before commencing the construction of the specified works the undertaker must furnish to A. B. Ports for its approval, which it must not unreasonably withhold, plans of the work showing the general mode of construction, depth and method of trenching and possible cable protection; and such works—

(a) must not be constructed otherwise than in accordance with such plans as may be approved by A. B. Ports; and

(b) are to be executed to the reasonable satisfaction of A. B. Ports.

(2) When submitting plans in respect of the specified works to the Secretary of State pursuant to article 39 (certification of plans etc), the undertaker must—

(a) send a copy of those plans to A. B. Ports; and

(b) on receipt of approval of plans or of any conditions or restrictions imposed by the Secretary of State, send a copy to A. B. Ports.

(3) If A. B. Ports fails to express its disapproval of any plans within 56 days after they have been delivered to it under sub-paragraph (1), it is deemed to have approved them.

**Commencement Information**

**I47** Sch. 12 para. 47 in force at 31.12.2014, see [art. 1](#)

**48.** The undertaker must give to A. B. Ports not less than 14 days' written notice of its intention to commence the construction of the specified works and, not more than 14 days after completion of such construction, must give to A. B. Ports written notice of such completion.

**Commencement Information**

**I48** Sch. 12 para. 48 in force at 31.12.2014, see [art. 1](#)

**49.** The undertaker must at all reasonable times during construction of the specified works and thereafter allow A. B. Ports, its servants and agents, access to such work and all reasonable facilities for inspection of any such work.

**Commencement Information**

**I49** Sch. 12 para. 49 in force at 31.12.2014, see [art. 1](#)

**50.—**(1) After the purpose of any temporary works has been accomplished the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from A. B. Ports requiring the undertaker so to do, remove any such temporary works or any materials relating thereto which may have been placed below the level of high water by or on behalf of the undertaker.

(2) If the undertaker fails to do so within a reasonable period after receiving such notice, A. B. Ports may remove the same and may recover the reasonable costs of doing so from the undertaker.

**Commencement Information**

**I50** Sch. 12 para. 50 in force at 31.12.2014, see [art. 1](#)

**51.—**(1) If during the construction of the specified works it is agreed, or in the absence of agreement it is proved to the satisfaction of an arbitrator appointed under article 41 (arbitration), that any accumulation or erosion has been caused wholly or partly by the construction of the specified works, the undertaker, if so requested by A. B. Ports acting reasonably, must remedy such accumulation or erosion to the extent attributable to such construction or exercise of powers.

(2) If the undertaker refuses or fails to do so, A. B. Ports may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

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**Commencement Information**

**I51** Sch. 12 para. 51 in force at 31.12.2014, see [art. 1](#)

**52.** The undertaker must pay to A. B. Ports the reasonable costs of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of the specified works.

**Commencement Information**

**I52** Sch. 12 para. 52 in force at 31.12.2014, see [art. 1](#)

**53.—(1)** Without prejudice to the other provisions of this Part of this Schedule, the undertaker is to be responsible for, and make good to A. B. Ports, all losses, costs, charges, damages and expenses however caused (including a reasonable and proper proportion of the overhead charges of A. B. Ports) which may reasonably be incurred by or occasioned to A. B. Ports by reason of or arising from or in connection with—

- (a) the perusal of plans and the inspection of the specified works by A. B. Ports or its duly authorised representative;
- (b) the construction or failure of the specified works, or the undertaking by A. B. Ports of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of A. B. Ports arising from such construction or failure;
- (c) any act or omission of the undertaker or their servants or agents whilst engaged in the construction of any of the specified works.

(2) Without prejudice to the generality of sub-paragraph (1), the undertaker must indemnify A. B. Ports from and against all claims and demands arising out of, or in connection with, such construction, or failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) or (2) are attributable to negligence on the part of A. B. Ports or of any person in its employ or of its contractors or agents.

(4) A. B. Ports must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.

**Commencement Information**

**I53** Sch. 12 para. 53 in force at 31.12.2014, see [art. 1](#)

**54.** The fact that any work or thing has been executed or done with the consent of A. B. Ports and in accordance with any conditions or restrictions prescribed by A. B. Ports or in accordance with any plans approved or deemed to be approved by A. B. Ports or to its satisfaction or in accordance with any directions or award of any arbitrator or in accordance with any plans approved by the Secretary of State and any conditions or restrictions imposed by him, does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

**Commencement Information**

**I54** Sch. 12 para. 54 in force at 31.12.2014, see [art. 1](#)

**55.** With the exception of any duty owed by A. B. Ports to the undertaker expressly provided for in the foregoing provisions of this Part of this Schedule, nothing in this Order is to be construed as imposing upon A. B. Ports, either directly or indirectly, any form of duty or liability to which A. B. Ports would not otherwise be subject which is enforceable by proceedings before any court.

**Commencement Information**

**I55** Sch. 12 para. 55 in force at 31.12.2014, see [art. 1](#)

**56.** Nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, A. B. Ports at the commencement of this Order or any title of A. B. Ports in, to or over any lands or foreshore held or acquired by it.

**Commencement Information**

**I56** Sch. 12 para. 56 in force at 31.12.2014, see [art. 1](#)

## PART 6 **E+W+S**

### For the protection of Anglian Water Services limited

**57.** For the protection of Anglian Water, the following provisions shall, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

**Commencement Information**

**I57** Sch. 12 para. 57 in force at 31.12.2014, see [art. 1](#)

**58.** In this Part of this schedule—

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means—

- (a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991; and
- (c) 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 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;

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“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; and

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

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**Commencement Information**

**I58** Sch. 12 para. 58 in force at 31.12.2014, see [art. 1](#)

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

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**Commencement Information**

**I59** Sch. 12 para. 59 in force at 31.12.2014, see [art. 1](#)

**60.**—(1) The undertaker must not execute any works that 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 which are the strips of land falling the following distances to either side of the medial line of any 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 the undertaker has submitted to Anglian Water not less than 28 days before starting the execution of any works, a plan and description of the works to be executed.

(2) Those works are to be executed only in accordance with the plan and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and an officer of Anglian Water is entitled to watch and inspect the execution of those works.

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

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

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

(6) It will be reasonable for Anglian Water to require that the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or the filling around the apparatus (where the apparatus is laid in a trench) be executed by Anglian Water.



(7) Anglian Water must execute any requirement made under sub-paragraph (6) in a timely manner.

**Commencement Information**

**I60** Sch. 12 para. 60 in force at 31.12.2014, see [art. 1](#)

**61.** The alteration, extension, removal or relocation of any apparatus shall not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2010 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such relocation are obtained, such approvals or agreements from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has given to Anglian Water written notice of its requirement to alter, extend, remove or relocate apparatus together with a plan and description of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and such works to be executed only in accordance with the plan 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.

**Commencement Information**

**I61** Sch. 12 para. 61 in force at 31.12.2014, see [art. 1](#)

**62.** If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

**Commencement Information**

**I62** Sch. 12 para. 62 in force at 31.12.2014, see [art. 1](#)

**63.** Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

**Commencement Information**

**I63** Sch. 12 para. 63 in force at 31.12.2014, see [art. 1](#)

**64.** 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 Anglian Water 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. Anglian Water shall use reasonable endeavours to establish contingency arrangements in a timely manner.

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**Commencement Information**

**I64** Sch. 12 para. 64 in force at 31.12.2014, see [art. 1](#)

**65.** Regardless of any provision in the 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 41 (arbitration).

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**Commencement Information**

**I65** Sch. 12 para. 65 in force at 31.12.2014, see [art. 1](#)

**66.** 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.

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**Commencement Information**

**I66** Sch. 12 para. 66 in force at 31.12.2014, see [art. 1](#)

**67.** 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 be given to Anglian Water as soon as reasonably practicable and, if identified by Anglian Water as being within its responsibility, will be afforded the same protection as other Anglian Water assets.

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**Commencement Information**

**I67** Sch. 12 para. 67 in force at 31.12.2014, see [art. 1](#)

**68.** If for any reason or in consequence of the construction of any of the works referred to in paragraphs 60 to 65 and 67 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 properly and reasonably incurred by Anglian Water,
- (c) by reason or in consequence of any such damage or interruption.

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**Commencement Information**

**I68** Sch. 12 para. 68 in force at 31.12.2014, see [art. 1](#)

**69.** The undertaker must repay Anglian Water the reasonable expenses incurred by Anglian Water in executing the works reasonably required under paragraph 60(6) and paragraph 61 and in complying with a written notice under paragraph 62.

**Commencement Information**

**I69** Sch. 12 para. 69 in force at 31.12.2014, see [art. 1](#)

**70.** Nothing in paragraph 68 above shall impose 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 Anglian Water, its officer, servants, contractors or agents.

**Commencement Information**

**I70** Sch. 12 para. 70 in force at 31.12.2014, see [art. 1](#)

**71.** Any difference or dispute arising between the undertaker and Anglian Water under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Anglian Water, be determined by arbitration in accordance with article 41 (arbitration).

**Commencement Information**

**I71** Sch. 12 para. 71 in force at 31.12.2014, see [art. 1](#)

## PART 7 **E+W+S**

### For the protection of Centrica plc

**72.** For the protection of Centrica the following provisions, unless otherwise agreed in writing between the undertaker and Centrica, have effect.

**Commencement Information**

**I72** Sch. 12 para. 72 in force at 31.12.2014, see [art. 1](#)

**73.** In this Part of this Schedule—

“access road” means the road providing access to Centrica’s power station from Chase Hill Road;

“apparatus” means Centrica’s pipelines, cables, structures, or other electrical, gas or telecommunication infrastructure owned, occupied or maintained by Centrica for the purposes of its undertaking; and

“Centrica” means Centrica Plc and all of its subsidiaries and group companies including but not limited to Centrica KPS Limited, Centrica Storage Limited and Centrica Energy.

**Commencement Information**

**I73** Sch. 12 para. 73 in force at 31.12.2014, see [art. 1](#)

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74. Before extinguishing any existing rights for Centrica to keep, inspect, renew and maintain its apparatus on, over or in the Order land or to cross the Order land to access its apparatus, the undertaker, with the agreement of Centrica, must create a new right, which is consistent with the existing right being extinguished, to keep, inspect, renew and maintain the apparatus in the same location or a new right of access that is reasonably convenient for Centrica, such agreement not to be unreasonably withheld or delayed.

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**Commencement Information**

**I74** Sch. 12 para. 74 in force at 31.12.2014, see [art. 1](#)

75.—(1) Save where paragraph 76 of this Part applies, no works are to commence within 10 metres of apparatus, or on, to or within 10 metres in any direction of the access road until a construction method statement to protect the apparatus and/or the access road as the case may be has been prepared by the undertaker and submitted to and agreed with Centrica (provided that Centrica must not unreasonably withhold or delay such agreement).

- (2) The construction method statement must include provisions in respect of—
- (a) the location and methods of reinforcement of crossing points over the apparatus and restrictions on building and altering the ground level over the apparatus elsewhere;
  - (b) a mechanism for the enforcement of the undertaker's use of designated crossing points over the apparatus and the agreed reinforcement methods; and
  - (c) adoption of a prior notification and consent regime which would require the undertaker to—
    - (i) seek Centrica's consent to the carrying out of the proposed development within the vicinity of the apparatus or on or to the access road, such consent not to be unreasonably withheld, and comply with any reasonable conditions attached by Centrica to its consent; and
    - (ii) notify Centrica of its intention to carry out any development within the vicinity of the apparatus or on or to the access road, such notification to be provided at least 48 hours prior to any such development occurring, and

the authorised development must be carried out in accordance with the approved construction method statement.

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**Commencement Information**

**I75** Sch. 12 para. 75 in force at 31.12.2014, see [art. 1](#)

76.—(1) If the undertaker acquires or overrides any interest in any land in which apparatus is laid, the apparatus must not be removed under this Part of this Schedule and any right of Centrica to maintain the apparatus in that land must not be extinguished until alternative apparatus has been constructed at the undertaker's expense, and is in operation to the reasonable satisfaction of Centrica in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of apparatus in that land, it must give to Centrica 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 Centrica reasonably needs to remove the apparatus) the undertaker must, subject to sub-

paragraph (3), afford to Centrica to their satisfaction (taking into account paragraph 77(1) below) the necessary facilities and rights for—

- (a) the construction of an alternative apparatus in other land of the undertaker or Centrica; 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 Centrica, 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, Centrica 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 must not extend to the requirement for Centrica to seek compulsory purchase powers to this end unless it elects to so do.

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

(5) Centrica must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to Centrica of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to, at the cost of the undertaker, 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**

**I76** Sch. 12 para. 76 in force at 31.12.2014, see [art. 1](#)

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Centrica 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 Centrica 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 must be referred to arbitration and, the arbitrator must make such provision for the payment of compensation by the undertaker to Centrica as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

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**Commencement Information**

**I77** Sch. 12 para. 77 in force at 31.12.2014, see [art. 1](#)

78. If for any reason or in consequence of the construction or operation of the authorised development, 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 Centrica, or to the access road, the undertaker must bear and pay the cost reasonably incurred by Centrica in making good any damage by reason or in consequence of any such damage provided

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that the maximum liability of the undertaker must be limited to £50,000,000 per claim or series of claims arising from one event.

**Commencement Information**

**178** Sch. 12 para. 78 in force at 31.12.2014, see [art. 1](#)

**79.** The undertaker must use its best endeavours to co-ordinate the execution and operation 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 Centrica’s undertaking and Centrica must use its best endeavours to co-operate with the undertaker for that purpose.

**Commencement Information**

**179** Sch. 12 para. 79 in force at 31.12.2014, see [art. 1](#)

**80.** Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any apparatus or override any easement or other interest of Centrica or acquire any land or other interest of Centrica or create any new rights over the same otherwise than by agreement of Centrica, which agreement must not be unreasonably withheld.

**Commencement Information**

**180** Sch. 12 para. 80 in force at 31.12.2014, see [art. 1](#)

## PART 8 **E+W+S**

### For the protection of VPI Immingham LLP

**81.** In this Part of this Schedule—

“VPI” means VPI Immingham LLP (Company number OC300980); and

“the pipeline” means the gas pipeline crossing the Order land owned and operated by VPI used at various times for the passage of gas and all ancillary apparatus including such works and apparatus properly appurtenant to the pipeline as are specified by section 65(2) of the Pipe-Lines Act 1962<sup>(5)</sup>.

**Commencement Information**

**181** Sch. 12 para. 81 in force at 31.12.2014, see [art. 1](#)

**82.** No less than 28 days before commencing any part of the authorised development or the operation of the authorised development which is near to and would or may have an effect on the operation and maintenance of the pipeline and access to it, the undertaker must submit to VPI plans and sections of the proposed works and such further particulars as VPI may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

(5) [1962 c.58](#). Section 65(2) was amended by paragraph 6 of Schedule 2 to the Energy Act [2011 \(c.16\)](#), by [S.I. 2000/1937](#) and by [S.I. 2011/2305](#).

**Commencement Information**

**I82** Sch. 12 para. 82 in force at 31.12.2014, see [art. 1](#)

**83.** No works comprising any part of the authorised development or the operation of the authorised development which would have an effect in full or in part on the operation, maintenance, repair, replacement and abandonment of the pipeline and access to it are to be commenced until plans and sections in respect of those works submitted under paragraph [82](#) have been approved by VPI.

**Commencement Information**

**I83** Sch. 12 para. 83 in force at 31.12.2014, see [art. 1](#)

**84.** Any approval of VPI required under paragraph [83](#) must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as VPI may require to be made for—

- (a) the continuing safety and operational viability of the pipeline; and
- (b) the requirement for VPI to have uninterrupted and unimpeded access to the pipeline at all times.

**Commencement Information**

**I84** Sch. 12 para. 84 in force at 31.12.2014, see [art. 1](#)

**85.—**(1) Subject to sub-paragraphs (2) and (3) below, if, by reason or in consequence of the construction of any of the works referred to in paragraph [82](#), any damage is caused to any apparatus or property of VPI, or there is any interruption in any service provided, or in the supply of any goods, by VPI, the undertaker must—

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

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

(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 VPI, its officers, servants, contractors or agents.

(3) VPI must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may 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**

**I85** Sch. 12 para. 85 in force at 31.12.2014, see [art. 1](#)

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## PART 9 **E+W+S**

### For the protection of Phillips 66 limited

**86.** In this Part of this Schedule—

“P66” means Phillips 66 Limited (Company number 00524868); and

“the pipeline” means the crude oil pipeline owned and operated by P66 used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) of the Pipe-Lines Act 1962.

#### Commencement Information

**I86** Sch. 12 para. 86 in force at 31.12.2014, see [art. 1](#)

**87.** No less than 28 days before commencing any part of the authorised development or the operation of the authorised development which is near to and would or may have an effect on the operation and maintenance of the pipelines and access to them, the undertaker must submit to P66 plans and sections of the proposed works and such further particulars as P66 may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

#### Commencement Information

**I87** Sch. 12 para. 87 in force at 31.12.2014, see [art. 1](#)

**88.** No works comprising any part of the authorised development or the operation of the authorised development which would have an effect in full or in part on the operation, maintenance, repair, replacement and abandonment of the pipelines and access to them are to be commenced until plans and sections in respect of those works submitted under paragraph 87 have been approved by P66.

#### Commencement Information

**I88** Sch. 12 para. 88 in force at 31.12.2014, see [art. 1](#)

**89.** Any approval of P66 required under paragraph 88 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as P66 may require to be made for—

- (a) the continuing safety and operational viability of the pipelines; and
- (b) the requirement for P66 to have uninterrupted and unimpeded access to the pipelines at all times.

#### Commencement Information

**I89** Sch. 12 para. 89 in force at 31.12.2014, see [art. 1](#)

**90.**—(1) Subject to sub-paragraphs (2) and (3) below, if, by reason or in consequence of the construction of any of the works referred to in paragraph 87, any damage is caused to any apparatus or property of P66, or there is any interruption in any service provided, or in the supply of any goods, by P66, the undertaker must—



- (a) bear and pay the cost reasonably incurred by P66 in making good such damage or restoring the supply; and
- (b) make reasonable compensation to P66 for any other expenses, loss, damages, penalty or costs incurred by P66,

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

(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 P66, its officers, servants, contractors or agents.

(3) P66 must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may 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**

**190** Sch. 12 para. 90 in force at 31.12.2014, see [art. 1](#)

## PART 10 **E+W+S**

### For the protection of C.GEN Killingholme limited

**91.**—(1) The following provisions apply to govern the relationship between the undertaker and C.GEN unless otherwise agreed in writing between the undertaker and C.GEN. For the avoidance of doubt, paragraphs [92](#), [93\(1\)](#) and [106\(1\)](#) of the following provisions shall apply only in respect of such parts of the grid connection land in which C.GEN have a land interest or have powers under any order or statutory instrument to acquire such an interest (whenever granted).

(2) In this Part of this Schedule—

“approving party” means the party from whom an approval should be, has been or should have been obtained under the terms of this Part, and shall be the undertaker in the case of specified work by C.GEN, and C.GEN in the case of specified work by the undertaker;

“C.GEN” means C.GEN Killingholme Limited (Company number 06422434), whose principal office is at 130 Shaftesbury Avenue, London W1D 5EU;

“C.GEN relevant land” means the area of land shown coloured yellow on the plan;

“construction” includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal and “construct” and “constructed” are construed accordingly;

“crossing zones” means those areas of land shown coloured green on the plan;

“dominant land” means the Order land shown numbered 404 on the land plans;

“drainage ditch” means the ditch shown by a black line marked ‘Drain’ on the plan;

“Hornsea Project Substation Site” means the substation site shown outlined in pink on the plan;

“grid connection land” means the C.GEN relevant land, the thermal buffer zone and the crossing zones;

“the plan” means the plan entitled the C.GEN Protective Provisions plan and certified as the C.GEN protective provisions plan by the Secretary of State for the purposes of this Part of this Schedule;

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“plans” includes sections, drawings, specifications, designs, design data, software, 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 the relevant land;

“promoting party” means the party who is seeking, has sought or should have sought an approval under the terms of this Part of this Schedule and shall be the undertaker in the case of specified work by the undertaker, and C.GEN in the case of specified work by C.GEN;

“pylon land” means the area of land shown cross-hatched in black on the plan;

“servient land” means any pond, ponds or any watercourse on land under the ownership of C.GEN as at the date of this Order;

“specified work” means so much of any work or operation by the undertaker or C.GEN as is in, on, under or over the grid connection land; and

“thermal buffer zone” means the area of land shown coloured red on the plan.

**Commencement Information**

**I91** Sch. 12 para. 91 in force at 31.12.2014, see [art. 1](#)

**92.** The undertaker must not under the powers of the Order acquire—

(a) new rights over the C.GEN relevant land; or

(b) new rights over the thermal buffer zone, except for the purposes of access and maintenance,

without the consent of C.GEN, such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions.

**Commencement Information**

**I92** Sch. 12 para. 92 in force at 31.12.2014, see [art. 1](#)

**93.—**(1) Subject to sub-paragraph (3), any specified work must be constructed—

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

(b) to the reasonable satisfaction of the approving party.

(2) If any part of the specified work is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the approving party may by notice in writing require the promoting party at the promoting party’s own expense to comply with the requirements of this Part of this Schedule or (if the promoting party so elects and the approving party in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the approving party reasonably requires.

(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (2) is served upon the promoting party, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the approving party may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the promoting party.

(4) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of

any requirement of such a notice, the approving party must not except in emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

**Commencement Information**

**I93** Sch. 12 para. 93 in force at 31.12.2014, see [art. 1](#)

**94.** The promoting party must give to the approving party not less than 14 days' written notice of its intention to commence the construction of the specified works and, not more than 14 days after completion of such construction, must give the approving party written notice of such completion.

**Commencement Information**

**I94** Sch. 12 para. 94 in force at 31.12.2014, see [art. 1](#)

**95.** The promoting party must at all reasonable times during construction of the specified works and thereafter allow the approving party, its servants and agents, access to such work and all reasonable facilities for inspection of any such work.

**Commencement Information**

**I95** Sch. 12 para. 95 in force at 31.12.2014, see [art. 1](#)

**96.—(1)** After the purpose of any temporary works has been accomplished the promoting party must with all reasonable dispatch, or after a reasonable period of notice in writing from the approving party requiring the promoting party to do so, remove any such temporary works or any materials relating thereto which may have been placed in, on, under or over the grid connection land by or on behalf of the promoting party.

(2) If the promoting party fails to do so within a reasonable period after receiving such notice, the approving party may remove the same and may recover the reasonable costs of doing so from the promoting party.

**Commencement Information**

**I96** Sch. 12 para. 96 in force at 31.12.2014, see [art. 1](#)

**97.—(1)** If any damage to the grid connection land or any apparatus of any approving party upon such land or any interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the promoting party must, notwithstanding any approval, make good such damage to the reasonable satisfaction of the approving party and must pay to the approving party all reasonable expenses to which the approving party may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(2) If the promoting party refuses or fails to do so, the approving party may cause the work to be done and may recover the reasonable cost of doing so from the promoting party.

**Commencement Information**

**I97** Sch. 12 para. 97 in force at 31.12.2014, see [art. 1](#)

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**98.**—(1) Without prejudice to the other provisions of this Part of this Schedule, the promoting party is to be responsible for, and must make good to the approving party, all losses, costs, charges, damages and expenses however caused (including a reasonable and proper proportion of the overhead charges of the approving party) which may reasonably be incurred by or occasioned to the approving party by reason of or arising from or in connection with—

- (a) the perusal of plans and the inspection of the specified works by the approving party or its duly authorised representative;
- (b) the construction or failure of the specified works, or the undertaking by the approving party of works or measures to prevent or remedy damage to any property of the approving party arising from such construction or failure;
- (c) any act or omission of the promoting party or their servants or agents whilst engaged in the construction of any of the specified works.

(2) The approving party must give to the promoting party notice in writing of any claim or demand for which the promoting party may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the promoting party.

(3) Nothing in this paragraph imposes any liability on the promoting party to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) are attributable to negligence on the part of the approving party or of any person in its employ or of its contractors or agents.

**Commencement Information**

**I98** Sch. 12 para. 98 in force at 31.12.2014, see [art. 1](#)

**99.** The fact that any work or thing has been executed or done with the consent of the approving party and in accordance with any conditions or restrictions prescribed by the approving party or in accordance with any plans approved by the approving party or to its satisfaction or in accordance with any directions or award of any arbitrator, does not relieve the promoting party from any liability under the provisions of this Part of this Schedule.

**Commencement Information**

**I99** Sch. 12 para. 99 in force at 31.12.2014, see [art. 1](#)

**100.** Any consent or approval of an approving party required under this Part of this Schedule—

- (a) must not be unreasonably withheld or delayed; and
- (b) may be given subject to reasonable conditions.

**Commencement Information**

**I100** Sch. 12 para. 100 in force at 31.12.2014, see [art. 1](#)

**101.** Any consent or approval of an approving party required under this Part of this Schedule shall be deemed to have been given if it is neither given nor refused within 42 days beginning with the date on which the application for consent or approval was submitted to the approving party.

**Commencement Information**

**I101** Sch. 12 para. 101 in force at 31.12.2014, see [art. 1](#)

**102.** Without prejudice to the generality of paragraph 100 of this Part of this Schedule, it shall not be reasonable for an approving party to withhold or delay any consent or approval under this Part of this Schedule in relation to specified work in, on, under, or over the grid connection land solely on the basis of thermal interaction between the circuit and any adjacent circuit, whether existing or proposed, where it has been demonstrated that there will be no material thermal interaction, which shall be deemed to have been demonstrated where the separation between such circuits is 6 metres or more (from the centre line of each circuit).

**Commencement Information**

**I102** Sch. 12 para. 102 in force at 31.12.2014, see [art. 1](#)

**103.** Without prejudice to the generality of paragraph 100, and in addition to the circumstances described in paragraph 102, it shall not be reasonable for the undertaker or C.GEN to withhold or delay any consent or approval under this Part of this Schedule in relation to specified work in, on, under, or over the crossing zones solely on the basis of thermal interaction where the plans of the specified work submitted under paragraph 93 demonstrate that all reasonable steps have been taken to minimise thermal interaction between the circuit and any other circuit, whether existing or proposed.

**Commencement Information**

**I103** Sch. 12 para. 103 in force at 31.12.2014, see [art. 1](#)

**104.** With the exception of any duty owed by the approving party to the promoting party expressly provided for in the foregoing provisions of this Part of this Schedule, nothing in this Order is to be construed as imposing upon the approving party, either directly or indirectly, any form of duty or liability to which the approving party would not otherwise be subject which is enforceable by proceedings before any court.

**Commencement Information**

**I104** Sch. 12 para. 104 in force at 31.12.2014, see [art. 1](#)

**105.** Save as this Part of this Schedule permits, nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, the approving party at the commencement of this Order or any title of the approving party in, to or over any lands held or acquired by it.

**Commencement Information**

**I105** Sch. 12 para. 105 in force at 31.12.2014, see [art. 1](#)

**106.—(1)** In the event that the undertaker begins to carry out the specified work before C.GEN and the undertaker requires to alter the course of, modify, or remove any part of the drainage ditch such alteration, modification or removal works must be approved in writing by C.GEN, such approval not to be unreasonably withheld or delayed but may be given subject to reasonable conditions.

**(2)** In the event that C.GEN begins to carry out the specified work before the undertaker and C.GEN requires to alter the course of, modify, or remove any part of the drainage ditch such alteration, modification or removal works must be approved in writing by the undertaker, such

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approval not to be unreasonably withheld or delayed but may be given subject to reasonable conditions.

**Commencement Information**

**I106** Sch. 12 para. 106 in force at 31.12.2014, see [art. 1](#)

**107.** The undertaker must ensure that the rate and/or volume of water discharged from the dominant land onto, over, across or through the servient land will not result in a significant increase in the exercise of the rights of the easement enjoyed by the dominant land on, over, across and through the servient land other than with the prior written approval of C.GEN.

**Commencement Information**

**I107** Sch. 12 para. 107 in force at 31.12.2014, see [art. 1](#)

**108.** The undertaker must not exercise the powers conferred by article 15 (compulsory acquisition of land) or article 16 (compulsory acquisition of rights) in respect of the Order land shown numbered 408 on the land plans to extinguish any rights that C.GEN has to connect into the North Killingholme National Grid substation.

**Commencement Information**

**I108** Sch. 12 para. 108 in force at 31.12.2014, see [art. 1](#)

**109.** The provisions of this Part of this Schedule will enure for the benefit of the undertaker, C.GEN and any statutory successor of either which is licensed under section 6 of the 1989 Act and is in occupation or use of the Hornsea Project Substation Site, the grid connection land or any part thereof pursuant to their undertaking.

**Commencement Information**

**I109** Sch. 12 para. 109 in force at 31.12.2014, see [art. 1](#)

## PART 11 **E+W+S**

For the protection of ConocoPhillips (UK) Limited

**110.** In this Part of this Schedule—

“ConocoPhillips” means ConocoPhillips (U.K.) Limited (Company Number 00524969); and  
 “the pipeline” means the condensate pipeline running from the ConocoPhillips Theddlethorpe Gas Terminal to the Humber Oil Refinery, operated by ConocoPhillips on behalf of the pipeline owner and all ancillary apparatus including such works and apparatus properly appurtenant to the pipeline as are specified by section 65(2) of the Pipe-Lines Act 1962.

**Commencement Information**

**I110** Sch. 12 para. 110 in force at 31.12.2014, see [art. 1](#)

**111.** No less than 28 days before commencing any part of the authorised development or the operation of the authorised development which is near to and would or may have an effect on the operation and maintenance of the pipeline and access to it, the undertaker must submit to ConocoPhillips plans and sections of the proposed works and such further particulars as ConocoPhillips may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

**Commencement Information**

**1111** Sch. 12 para. 111 in force at 31.12.2014, see [art. 1](#)

**112.** No works comprising any part of the authorised development or the authorised project which would have an effect in full or in part on the operation, maintenance, repair, replacement and abandonment of the pipeline and access to it are to be commenced until plans and sections in respect of those works submitted under paragraph 111 have been approved by ConocoPhillips.

**Commencement Information**

**1112** Sch. 12 para. 112 in force at 31.12.2014, see [art. 1](#)

**113.** Any approval of ConocoPhillips required under paragraph 112 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as ConocoPhillips may require to be made for—

- (a) the continuing safety and operational viability of the pipeline; and
- (b) the requirement for ConocoPhillips to have uninterrupted and unimpeded access to the pipeline at all times.

**Commencement Information**

**1113** Sch. 12 para. 113 in force at 31.12.2014, see [art. 1](#)

**114.—(1)** Subject to sub-paragraphs (2) and (3) below, if, by reason or in consequence of the constructions of any of the works referred to in paragraph 111, any damage is caused to any apparatus or property of ConocoPhillips, or there is any interruption in any service provided, or in the supply of any goods, by ConocoPhillips, the undertaker must—

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

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

(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 ConocoPhillips, its officers, servants, contractors or agents.

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

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**Commencement Information**

**I114** Sch. 12 para. 114 in force at 31.12.2014, see [art. 1](#)



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**Changes and effects yet to be applied to :**

- Sch. 12 Pt. 3 para. 31(2) words inserted by [S.I. 2017/1011 Sch. 4 para. 45\(2\)\(a\)\(iii\)](#) (This amendment comes into force on the day on which section 4 of, and Schedule 1 to, the Digital Economy Act 2017 come fully into force. S.I. 2017/1286, reg. 2 brought those provisions fully into force on 28.12.2017)
- Sch. 12 Pt. 3 para. 31(2) words omitted by [S.I. 2017/1011 Sch. 4 para. 45\(2\)\(a\)\(i\)](#) (This amendment comes into force on the day on which section 4 of, and Schedule 1 to, the Digital Economy Act 2017 come fully into force. S.I. 2017/1286, reg. 2 brought those provisions fully into force on 28.12.2017)
- Sch. 12 para. 86 words substituted by [S.I. 2015/1280 Sch.](#)
- Sch. 12 para. 103 words substituted by [S.I. 2015/1280 Sch.](#)
- Sch. 12 para. 110 words substituted by [S.I. 2015/1280 Sch.](#)
- Sch. 12 Pt. 6 para. 61(a) words substituted by [S.I. 2016/1154 Sch. 29 Pt. 2 para. 78\(3\)](#)
- Sch. 12 Pt. 3 para. 31(2) words substituted by [S.I. 2017/1011 Sch. 4 para. 45\(2\)\(a\)\(ii\)](#) (This amendment comes into force on the day on which section 4 of, and Schedule 1 to, the Digital Economy Act 2017 come fully into force. S.I. 2017/1286, reg. 2 brought those provisions fully into force on 28.12.2017)
- Sch. 12 Pt. 3 para. 32 words substituted by [S.I. 2017/1011 Sch. 4 para. 45\(2\)\(b\)](#) (This amendment comes into force on the day on which section 4 of, and Schedule 1 to, the Digital Economy Act 2017 come fully into force. S.I. 2017/1286, reg. 2 brought those provisions fully into force on 28.12.2017)

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

- Order modified by [S.I. 2016/471 art. 4Sch.](#)

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

- art. 2(6) inserted by [S.I. 2015/1280 Sch.](#)