

SCHEDULE 9

PROTECTIVE PROVISIONS

PART 2

For the Protection of National Grid Electricity Transmission plc and National Grid Gas plc

Application

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

Interpretation

2. In this Part—

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

“apparatus” means—

- (a) in the case of National Grid Electricity Transmission plc, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid Electricity Transmission plc;
- (b) in the case of National Grid Gas, any mains, pipes or other apparatus belonging to or maintained by National Grid Gas for the purposes of gas supply;

“functions” includes powers and duties;

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

“maintain” and “maintenance” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the protected person including construct, use, repair, alter, inspect, renew or remove the apparatus;

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

“protected person” means—

- (a) in relation to its undertaking for the purposes of electricity transmission, National Grid Electricity Transmission plc; and
- (b) in relation to its undertaking for the purposes of gas supply, National Grid Gas, as applicable.

3. Except for paragraphs 4 (apparatus of protected person in stopped up streets), 9 (retained apparatus: protection for National Grid Electricity Transmission plc), 10 (expenses) and 11 (indemnity) this Part does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

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Apparatus of protected person in stopped up streets

4. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up of streets) or article 14 (temporary stopping up of public rights of way), a protected person is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of land

5.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any land interest or apparatus or override any easement or other interest of a protected person or create any new rights over the same otherwise than by agreement of the relevant protected person such agreement not to be unreasonably withheld or delayed (having regard to the protected person's existing and future requirements for such land or interests).

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

Removal of apparatus

6.—(1) If, in the exercise of the agreement reached in accordance with paragraph 5 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus of the protected person is placed, that apparatus must not be removed under this Part and any right of a protected person 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 protected person in question in accordance with sub-paragraphs (2) to (5).

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

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the protected person in question 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 does not extend to the requirement for the protected person to use its compulsory purchase powers to this end unless it elects to so do.

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

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

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected person under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the protected person in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter must be referred to arbitration and the arbitrator must make such provision for the payment of compensation by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection for National Grid Gas plc

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

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

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

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

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

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- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld.

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

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

(7) Where a protected person requires any protective works to be carried out either itself or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the protected person's satisfaction prior to the commencement of any works (or any relevant part thereof) and the protected person must give 56 days' notice of the protective works from the date of submission of a plan in accordance with sub-paragraph (1) (except in an emergency).

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

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

(10) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under this Order the undertaker must comply with National Grid Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid high pressure gas pipelines and associated installation requirements for third parties T/SP/SSW22" and Health and Safety Executive's "HS(-G)47 Avoiding Danger from Underground Services".

Retained apparatus: protection for National Grid Electricity Transmission plc

9.—(1) Not less than 56 days before the commencement of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise, the undertaker must submit to the protected person in question a plan and seek from the protected person in question details of the underground extent of their electricity tower foundations.

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

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

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

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

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

(5) Any approval of the protected person required under sub-paragraph (4)—

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

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

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

(8) Where a protected person requires any protective works to be carried out either itself or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the protected person's satisfaction prior to the commencement of any works (or any relevant

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part thereof) and the protected person must give 56 days' notice of the protective works from the date of submission of a plan in accordance with sub-paragraph (1) (except in an emergency).

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

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

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraph (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

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

Expenses

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

- (a) the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that the protected person elects to use compulsory purchase powers to acquire any necessary rights under paragraph 6(3) all costs incurred as a result of such action;
- (b) the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the protected person in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs must be borne by the undertaker.

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

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

(5) An amount which apart from this sub-paragraph would be payable to a protected person in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the protected person any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part or any subsidence resulting from any of those works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a protected person, or there is any interruption in any service provided, or in the supply of any goods, by any protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and
- (b) indemnify that protected person for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the protected person, by reason or in consequence of any such damage or interruption or the protected person becoming liable to any third party.

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

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(3) 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 neglect or default of a protected person, its officers, servants, contractors or agents.

Ground subsidence monitoring scheme in respect of protected person's apparatus

12.—(1) No works within 15 metres of any apparatus or alternative apparatus which are capable of interfering with or risking damage to a protected person's apparatus may commence until a scheme for monitoring ground subsidence (referred to in this paragraph as the "monitoring scheme") has been submitted to and approved by the relevant protected person, such approval not to be unreasonably withheld or delayed.

(2) The ground subsidence monitoring scheme described in sub-paragraph (1) must set out—

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, requires the undertaker to submit for the relevant protected person's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (4).

(3) The monitoring scheme required by sub-paragraph (1) must be submitted not less than 56 days before the commencement of any works authorised by this Order or comprised within the authorised development, and any requirements of the protected person must be notified within 28 days of receipt of the monitoring scheme; thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") must be submitted to the protected person for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person save that the protected person retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and may recover any such costs in line with paragraph 10.

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority pursuant to Part 2 of Schedule 1 (Requirements) the undertaker may submit a revised monitoring scheme or mitigation scheme to the protected person for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

Enactments and agreements

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

Co-operation

14. Where, in consequence of the proposed construction of any of the authorised development, the undertaker or a protected person requires the removal of apparatus under paragraph 6(2) or a

protected person makes requirements for the protection or alteration of apparatus under paragraph 8 or 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the protected person's undertaking and each protected person must use its best endeavours to co-operate with the undertaker for that purpose.

Access

15. If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

16. Save for differences or disputes arising under paragraphs 6(2) and (4), 7(1), 8 and 9, any difference or dispute arising between the undertaker and a protected person under this Part must, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 42 (arbitration).