

## SCHEDULES

### SCHEDULE 9 **E+W**

Article 37

#### PROTECTIVE PROVISIONS

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

#### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

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

#### **Commencement Information**

**II** Sch. 9 para. 1 in force at 1.9.2020, see [art. 1](#)

2. In this Part—

“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—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989 <sup>M1</sup>), belonging to or maintained by that utility undertaker;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term—
  - (i) mains, pipes or other apparatus belonging to or maintained by that utility 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 (agreement to adopt water main or service pipe at future date) of the Water Industry Act 1991;
- (d) in the case of a utility undertaker within paragraph (d) of the definition of that term—
  - (i) any drain or works vested in the utility 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) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act, and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation))

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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 (electricity supply) of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986;
- (c) water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

**Commencement Information**

**I2** Sch. 9 para. 2 in force at 1.9.2020, see [art. 1](#)

**Marginal Citations**

**M1** 1989 c.29.

**Precedence of the 1991 Act in respect of apparatus in the streets** **E+W**

**3.** This Part 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 (street works in England and Wales) of the 1991 Act.

**Commencement Information**

**I3** Sch. 9 para. 3 in force at 1.9.2020, see [art. 1](#)

**4.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

**Commencement Information**

**I4** Sch. 9 para. 4 in force at 1.9.2020, see [art. 1](#)

## No acquisition etc. except by agreement **E+W**

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### Commencement Information

**I5** Sch. 9 para. 5 in force at 1.9.2020, see [art. 1](#)

## Removal of apparatus **E+W**

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(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, the undertaker 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 subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable 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 must 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 42 (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 42 (arbitration), 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.

(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, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, 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) 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**

**I6** Sch. 9 para. 6 in force at 1.9.2020, see [art. 1](#)

**Facilities and rights for alternative apparatus** **E+W**

7.—(1) Where, in accordance with the provisions of this Part, 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 must 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 42.

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

**Commencement Information**

**I7** Sch. 9 para. 7 in force at 1.9.2020, see [art. 1](#)

**Retained Apparatus** **E+W**

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under 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), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under 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 the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a 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 (1) 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 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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 reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**Commencement Information**

**18** Sch. 9 para. 8 in force at 1.9.2020, see [art. 1](#)

**Expenses and costs** **E+W**

**9.**—(1) 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 6(2).

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 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 utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), 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, is to be reduced by the amount which represents that benefit.

**Changes to legislation:** There are currently no known outstanding effects for the *The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9.* (See end of Document for details)

**Commencement Information**

**I9** Sch. 9 para. 9 in force at 1.9.2020, see [art. 1](#)

**10.**—(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 6(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 is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**Commencement Information**

**I10** Sch. 9 para. 10 in force at 1.9.2020, see [art. 1](#)

**Enactments and agreements** **E+W**

**11.** Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and a [<sup>F1</sup>utility undertaker] in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**Textual Amendments**

**F1** Words in [Sch. 9 para. 11](#) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

**Commencement Information**

**I11** Sch. 9 para. 11 in force at 1.9.2020, see [art. 1](#)

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

**FOR THE PROTECTION OF OPERATORS OF  
ELECTRONIC COMMUNICATIONS CODE NETWORKS**

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

(2) In this Part—

“the 2003 Act” means the Communications Act 2003 <sup>M2</sup>;

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in section 106 (application of the electronic communications code) of the 2003 Act <sup>M3</sup>;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code;

“network” means—

(a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and

(b) a network which the Secretary of State is providing or proposing to provide; and

“operator” means a person in whose case the electronic communications code is applied by a direction under section 106(5) of the 2003 Act and who is an operator of a network.

**Commencement Information**

**I12** Sch. 9 para. 12 in force at 1.9.2020, see [art. 1](#)

**Marginal Citations**

**M2** 2003 c.21 as amended by the [Digital Economy Act 2017 \(c.30\)](#).

**M3** Added by Schedule 1 of the [Digital Economy Act 2017 \(c.30\)](#).

**13.** The exercise of the powers of article 29 (statutory undertakers) is subject to Part 10 of Schedule 3A (the electronic communications code) of the 2003 Act.

**Commencement Information**

**I13** Sch. 9 para. 13 in force at 1.9.2020, see [art. 1](#)

**14.—(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 any of those works—

(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 make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, 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 is to be made without the consent of the undertaker

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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.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

**Commencement Information**

**I14** Sch. 9 para. 14 in force at 1.9.2020, see [art. 1](#)

**15.** This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

**Commencement Information**

**I15** Sch. 9 para. 15 in force at 1.9.2020, see [art. 1](#)

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

**Commencement Information**

**I16** Sch. 9 para. 16 in force at 1.9.2020, see [art. 1](#)

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

### **FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER**

#### **Application** **E+W**

**17.** For the protection of National Grid referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

**Commencement Information**

**I17** Sch. 9 para. 17 in force at 1.9.2020, see [art. 1](#)

#### **Interpretation** **E+W**

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

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



“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the [F<sup>2</sup>Electricity Act 1989] belonging to or maintained by that undertaker;
- (b) 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,

together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

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

“commence” has the same meaning as in article 2 (interpretation) of the Order and commencement is to be construed to have the same meaning save that for the purposes of this Part only the [F<sup>3</sup>terms] commence and commencement include any below ground surveys, monitoring or operations or receipt and erection of construction plant and equipment within 15 metres of any apparatus;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary mitigation measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for National Grid's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

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

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

“National Grid” means—

- (a) National Grid Electricity Transmission plc (company number 2366977) whose registered office is at 1-3 Strand, London WC2N 5EH; and

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- (b) National Grid Gas plc (company number 200600) whose registered office is at 1-3 Strand, London WC2N 5EH,

as the context requires; and

“specified works” means any of the authorised development or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 23(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 23(2) or otherwise; and/or
- (c) includes in relation to gas apparatus any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid'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/SSW/22”).

#### Textual Amendments

**F2** Words in Sch. 9 para. 18 substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

**F3** Word in Sch. 9 para. 18 substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

#### Commencement Information

**I18** Sch. 9 para. 18 in force at 1.9.2020, see art. 1

### On Street Apparatus **E+W**

19. Except for paragraphs 20 (apparatus of undertakers in streets subject to temporary prohibition or restriction), <sup>[F4]</sup>25 (retained apparatus: protection of gas undertaker), 27 (expenses) and 28 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

#### Textual Amendments

**F4** Words in Sch. 9 para. 19 substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

#### Commencement Information

**I19** Sch. 9 para. 19 in force at 1.9.2020, see art. 1

### Apparatus of undertakers in streets subject to temporary prohibition or restriction **E+W**

20. Notwithstanding a temporary prohibition or restriction under the powers of article 11 (temporary prohibition or restriction on the use of streets), National Grid will be at liberty at all times to take all necessary access across any street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

#### Commencement Information

**I20** Sch. 9 para. 20 in force at 1.9.2020, see [art. 1](#)

#### Protective works to buildings **E+W**

**21.**—(1) The undertaker, in the case of the powers conferred by article 33 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity and/or gas, as the case may be, by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), must—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default [<sup>F5</sup>of National Grid] or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof may be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

#### Textual Amendments

**F5** Words in [Sch. 9 para. 21\(2\)](#) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), [art. 1](#), [Sch.](#)

#### Commencement Information

**I21** Sch. 9 para. 21 in force at 1.9.2020, see [art. 1](#)

#### Acquisition of land **E+W**

**22.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to this Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement, such agreement not to be unreasonably withheld.

(2) As a condition of agreement between the parties in paragraph 22(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affect the provision of any enactment or apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to

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procure and/or secure the consent and entering into of such deeds and variation by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or [<sup>F6</sup>removal of apparatus (including] but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(4) Any agreement or consent granted by National Grid under paragraph 25 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph (3).

#### Textual Amendments

**F6** Words in *Sch. 9 para. 22(3)* substituted (17.5.2021) by *The Immingham Open Cycle Gas Turbine (Correction) Order 2021 (S.I. 2021/581)*, art. 1, *Sch.*

#### Commencement Information

**I22** *Sch. 9 para. 22* in force at 1.9.2020, see art. 1

### Removal of apparatus **E+W**

**23.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 22 or in any other authorised manner, 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 [<sup>F7</sup>any right of National Grid] 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 National Grid in question in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 24(1) below) the necessary facilities and rights—

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

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

**Changes to legislation:** There are currently no known outstanding effects for the *The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9*. (See end of Document for details)

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

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

#### Textual Amendments

**F7** Words in [Sch. 9 para. 23\(1\)](#) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

#### Commencement Information

**I23** Sch. 9 para. 23 in force at 1.9.2020, see art. 1

### Facilities and rights for alternative apparatus **E+W**

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under 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 National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject [<sup>F8</sup>then the matter will be referred to arbitration] under paragraph 32 (arbitration) of this Part of this Schedule and the arbitrator may make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### Textual Amendments

**F8** Words in [Sch. 9 para. 24\(2\)](#) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

#### Commencement Information

**I24** Sch. 9 para. 24 in force at 1.9.2020, see art. 1

### Retained apparatus: protection of gas undertaker **E+W**

**25.—(1)** Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

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

**Changes to legislation:** There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)

- (a) the exact position of the works;
  - (b) the level at which these are proposed to be constructed or renewed;
  - (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
  - (d) the position of all apparatus;
  - (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
  - (f) any intended maintenance regimes.
- (3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.
- (4) Any approval of National Grid required under sub-paragraph (2)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
  - (b) must not be unreasonably withheld.
- (5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.
- (7) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (8) If National Grid in accordance with sub-paragraphs (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 17 to 19 and 22 to 24 apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(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 the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.
- (10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—
- (a) comply with sub-paragraphs (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 the Order the undertaker must comply with National Grid'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 HSE’s “HS(G)47 Avoiding Danger from underground services”.

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 28.

### **Retained apparatus: protection of electricity undertaker**

#### **Commencement Information**

**I25** Sch. 9 para. 25 in force at 1.9.2020, see [art. 1](#)

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

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

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

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

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

- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.
- (4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.
- (5) Any approval of National Grid required under sub-paragraphs (2) or (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
  - (b) must not be unreasonably withheld.
- (6) In relation to any work to which sub-paragraph (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (7) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.
- (8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grids' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 17 to 19 and 22 to 24 apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(2).
- (10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.
- (11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—
- (a) comply with sub-paragraphs (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 the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 “Avoidance of Danger from Overhead Lines”.

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**Commencement Information**

**I26** Sch. 9 para. 26 in force at 1.9.2020, see [art. 1](#)



## Expenses **E+W**

27.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 23(3); and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

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

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

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

(5) An amount which apart from this sub-paragraph would be [<sup>F9</sup>payable to National Grid] in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

#### Textual Amendments

**F9** Words in *Sch. 9 para. 27(5)* substituted (17.5.2021) by *The Immingham Open Cycle Gas Turbine (Correction) Order 2021 (S.I. 2021/581)*, art. 1, *Sch.*

#### Commencement Information

**I27** *Sch. 9 para. 27* in force at 1.9.2020, see art. 1

### Indemnity **E+W**

**28.**—(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 of this Schedule 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 him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

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

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and

(b) any part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by [<sup>F10</sup>National Grid as an assignee, transferee or lessee of the undertaker] with the benefit of this Order pursuant to section 156 of the Planning Act 2008 (benefit of order granting development consent) or article 7 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 28.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 28 applies where it is within National Grid's reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control.

#### Textual Amendments

**F10** Words in Sch. 9 para. 28(3)(b) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, Sch.

#### Commencement Information

**I28** Sch. 9 para. 28 in force at 1.9.2020, see art. 1

### Enactments and agreements **E+W**

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

#### Commencement Information

**I29** Sch. 9 para. 29 in force at 1.9.2020, see [art. 1](#)

### Co-operation **E+W**

**30.—(1)** Where in consequence of the proposed construction of any of the authorised development, [<sup>F11</sup>the undertaker or National Grid] requires the removal of apparatus under paragraph 23(2) [<sup>F11</sup>or National Grid makes requirements] for the protection or alteration of apparatus under [<sup>F11</sup>paragraphs 25 and 26], 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 National Grid's undertaking and [<sup>F11</sup>National Grid must use its best endeavours] to co-operate with the undertaker for that purpose.

**Changes to legislation:** There are currently no known outstanding effects for the *The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9*. (See end of Document for details)

(2) For the avoidance of doubt whenever [F12National Grid’s consent], agreement or approval to is required in relation to plans, documents or other information [F12submitted by the undertaker or the taking of action by the undertaker], it must not be unreasonably withheld or delayed.

#### Textual Amendments

**F11** Words in Sch. 9 para. 30(1) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

**F12** Words in Sch. 9 para. 30(2) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

#### Commencement Information

**I30** Sch. 9 para. 30 in force at 1.9.2020, see [art. 1](#)

#### Access **E+W**

**31.** If in consequence of the agreement reached in accordance with paragraph 22(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 National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

#### Commencement Information

**I31** Sch. 9 para. 31 in force at 1.9.2020, see [art. 1](#)

#### Arbitration **E+W**

**32.** Save for differences or disputes arising under paragraphs 23(2), 23(4), 24(1), 25 and 27(5) any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 42 (arbitration).

#### Commencement Information

**I32** Sch. 9 para. 32 in force at 1.9.2020, see [art. 1](#)

#### Notices **E+W**

**33.** The plans submitted to National Grid by the undertaker pursuant to paragraphs 25(1) and 26(1) must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

#### Commencement Information

**I33** Sch. 9 para. 33 in force at 1.9.2020, see [art. 1](#)

## PART 4 E+W

### FOR THE PROTECTION OF PHILLIPS 66 LIMITED

#### Benefit of protective provisions E+W

34. For the protection of P66, the following provisions, unless otherwise agreed in writing between the undertaker and P66, have effect.

#### Commencement Information

I34 Sch. 9 para. 34 in force at 1.9.2020, see [art. 1](#)

#### Interpretation E+W

35. In this Part of this Schedule—

“applicable legislation” means European Union directives and regulations, statutes, regulations or subordinate or local legislation or notices or other requirements or directions of any relevant body (including any public body or agency or other authority) and any formal guidance notes or codes of conduct issued by or under the same, and common law but only in so far as the same are valid and have the force of law relating to—

- (a) the use of or any activity on the VPI pipeline corridor; or
- (b) any process, conduct or activity (including without limit treatment, transport, storage, [F<sup>13</sup>disposal or release]) involving any hazardous material on under above in or about the VPI pipeline corridor; or
- (c) the health and safety of employees, visitors, contractors and other persons at or in the vicinity of the VPI pipeline corridor; or
- (d) the exercise of the specified rights; or
- (e) otherwise the protection of the environment; or
- (f) any requirement pertaining to reporting, notification or disclosure of information to any body or person concerning any matter referred above;

“affected assets” means apparatus owned or operated by P66 on or above ground which in the reasonable opinion of P66 would have the potential to be physically affected by the relevant works;

“apparatus” means any part of the pipelines and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Part of this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any cathodic protection, coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962<sup>M4</sup>, as if the pipelines were a “pipe-line” in section 65(1) of that Act;

“CHP land” means the land on which the VPI Immingham CHP power station is sited as at the date of this Order, at Rosper Road, near Immingham;

“contamination” means any contamination by hazardous material which harms or damages or otherwise adversely affects or presents a significant risk of harm or damage or other adverse effects or a significant possibility of such harm or damage or other adverse effects to the

**Changes to legislation:** There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)

environment or in relation to controlled waters the presence of substances which cause or are likely to cause pollution of controlled waters;

“controlled waters” has the meaning given to it in Section 104 of the Water Resources Act 1991;

“damage” includes all damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

“decision” means the decision of the relevant local planning authority (or of an inspector appointed by the Secretary of State to decide an appeal lodged against the local planning authority's decision) to grant or refuse (as the case may be) a P66 planning permission;

“described land” means any land owned by or acquired by P66 as lies within the limits of lateral deviation authorised by a P66 planning permission;

“development” has the meaning given to it by section 55 of the Town and Country Planning Act 1990;

“development plan” means the development plan or a local plan operative in respect of any part of the described land following adoption of it by the local planning authority;

“diversion route” means the route to be agreed or determined in accordance with paragraph 98 of this Part of this Schedule;

“engineer” means an engineer appointed by P66 for the purposes of this Order;

“existing gas pipeline” means that part of the existing underground gas pipeline within the Order land which connects the VPI Immingham CHP power station as at the date of this Order, at Rosper Road, near Immingham, to the National Grid Feeder No.9 located to the west of South Killingholme;

“good industry practice” means the standards and practice which would reasonably and ordinarily be expected from a skilled and experienced operator of the relevant apparatus or infrastructure in the United Kingdom;

“hazardous material” means any substance (whether in solid, liquid or gaseous form) which alone or in combination with others is capable of polluting the environment or capable of causing significant harm to the environment;

“HOR” means the Humber Oil Refinery which at the date of this Order is owned and operated by P66;

“local planning authority” means the planning authority responsible for determining an application for P66 planning permission;

“P66” means Phillips 66 Limited (Company number 00529086) and any subsequent owner of the pipelines or HOR;

“P66 address” means the postal address details to be provided pursuant to paragraph 103;

“P66 email” means the email address details to be provided pursuant to paragraph 103;

“P66 land” means any interest in land owned by P66 on the date of this Order and within the Order land;

“P66 planning permission” means a planning permission within the meaning of Section 336 of the 1990 Act;

“pipelines” means the 3 pipelines located in the pipeline corridor crossing the Order limits which at the date of this Order are owned and operated by P66 for the passage of multipurpose 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;

“pipeline corridor” means the corridor within the Order land within which the pipelines are located;

“planning application” means an application for a P66 planning permission;

“protected land” means such parts of the Order land as fall within the pipeline corridor;

“relevant plan provision” means a policy or provision contained in a development plan restricting development or to the effect that no development may be carried out in some part of the described land where either—

- (a) the policy or provision is included for any reason related to the position of the VPI apparatus; or
- (b) the decision to apply the policy or provision to that part of the described land was made for any reason related to the position of the VPI apparatus;

“relevant work” means a work which may have an effect on the operation, maintenance, abandonment of or access to any of the pipelines;

“scheme of works” means such works designed to investigate, rectify, remove and/or treat and render harmless contamination and its effects including making good any damage caused in so doing;

“specified asset” means any asset owned and operated by P66 and forming part of the P66 land which would be physically affected by the specified works;

“specified rights” means the rights as may be acquired by the undertaker in any part of the P66 land pursuant to the powers in Part 5 of this Order;

“specified work” [<sup>F13</sup>means] any work carried out pursuant to the specified rights;

“VPI apparatus” means gas pipes, water pipes, electricity cables and other conducting media and associated supports, gantries, bridges, ladders, steps, <sup>F14</sup>... walkways, cables, poles and stays, security cameras and ancillary equipment necessary for conducting steam, heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities for the transport of all or any utilities;

“VPI pipeline corridor” means the corridor of land along the existing gas pipeline within which the undertaker acquires specified rights; and

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of the undertaker and their principal contractors' management of change procedures;
- (c) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;
- (d) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to any of the pipelines;
- (e) details of the means by which the pipelines can be properly inspected and if necessary repaired during the construction and operation of the authorised development;
- (f) details of the emergency response plan as prepared in consultation with local emergency services and P66;
- (g) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system and the proposed remedial works;

**Changes to legislation:** There are currently no known outstanding effects for the *The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9.* (See end of Document for details)

- (h) any further particulars provided in accordance with paragraph 36(3) or 53(1);
- (i) a description of the land upon which the proposed works will be carried out including a written record of the ground conditions of the land and details of any historic land contamination; and
- (j) a description of any trees that will be removed pursuant to the carrying out of the proposed works.

#### Textual Amendments

- F13** Word in Sch. 9 para. 35 substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)
- F14** Word in Sch. 9 para. 35 omitted (17.5.2021) by virtue of [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

#### Commencement Information

- I35** Sch. 9 para. 35 in force at 1.9.2020, see art. 1

#### Marginal Citations

- M4** 1962 c.58. Section 65 was amended by section 89(1) of, and paragraphs 1 and 2 Schedule 2 to, the [Energy Act 2011 \(c.16\)](#), [S.I. 2000/1937](#) and [S.I. 2011/2305](#).

### Authorisation of works details affecting pipelines or protected crossings **E+W**

**36.**—(1) Before commencing any part of a relevant work the undertaker must submit the works details to P66 in accordance with paragraph 103.

(2) The works details submitted under sub-paragraph (1) will be treated as having been received by P66 on the date—

- (a) that the undertaker obtains written acknowledgement of receipt from P66; or
- (b) two clear working days following the date that the work details were submitted under sub-paragraph (1),

whichever is earliest.

(3) The undertaker must as soon as reasonably practicable provide such further particulars as P66 may, within 60 days from the receipt of the works details under sub-paragraph (2), reasonably require.

#### Commencement Information

- I36** Sch. 9 para. 36 in force at 1.9.2020, see [art. 1](#)

**37.** No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under paragraph 36 have been authorised by P66; or
- (b) the works details supplied in respect of that relevant work under paragraph 36 have been authorised by an expert under paragraph 39(3); or
- (c) authorisation is deemed to have been given in accordance with paragraph 39(1).



**Commencement Information**

**I37** Sch. 9 para. 37 in force at 1.9.2020, see [art. 1](#)

**38.**—(1) Any authorisation by P66 required under paragraph 37(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as P66 may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset; and
- (b) the requirement for P66 to have—
  - (i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and
  - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) Where P66 can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the pipelines it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of P66 that the authorised development will not significantly adversely affect the safety of the pipelines.

(3) The authorised development must be carried out in accordance with the works details authorised under paragraph 37 and any conditions imposed on the authorisation under sub-paragraph (1).

(4) Where there has been a reference to an expert in accordance with paragraph 39(2) and the expert gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 39(3).

**Commencement Information**

**I38** Sch. 9 para. 38 in force at 1.9.2020, see [art. 1](#)

**39.**—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 36(1) within 60 days of receipt by P66 under paragraph 36(2) and no further particulars have been requested under paragraph 36(3); or
- (b) authorisation has not been given within 45 days of receipt by P66 of the further particulars supplied under paragraph 36(3),

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 38(1); or
- (b) the undertaker considers that P66 has given its authorisation under paragraph 38(1) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under paragraph 102.

(3) Where the matter is referred to an expert under paragraph 39(2) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 38(1).

(4) Where the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 38(2) then the matter may be referred to an expert on the application of either party (after

giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association for determination under paragraph 102.

**Commencement Information**

**I39** Sch. 9 para. 39 in force at 1.9.2020, see [art. 1](#)

**Notice of works** **E+W**

**40.** The undertaker must provide to P66 a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

**Commencement Information**

**I40** Sch. 9 para. 40 in force at 1.9.2020, see [art. 1](#)

**Further provisions about relevant works** **E+W**

- 41.** Before carrying out a relevant work the undertaker must—
- (a) provide P66 with baseline data for any existing cathodic protection of the affected asset; and
  - (b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

**Commencement Information**

**I41** Sch. 9 para. 41 in force at 1.9.2020, see [art. 1](#)

**Monitoring for damage to pipelines** **E+W**

**42.—(1)** When carrying out the relevant work the undertaker must monitor the relevant affected assets to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify P66 to enable repairs to be carried out to the reasonable satisfaction of P66.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of P66—

- (a) afford P66 all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to P66 its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of P66 to have effectively repaired the affected asset before any backfilling takes place.

(4) If in the course of carrying out repairs under sub-paragraph (3)(a) or (3)(b) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a

depth greater than the depth at which existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the repairs 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 would be payable to P66 under sub-paragraph (3)(a), or incurred by the undertaker under sub-paragraph (3)(b), by virtue of paragraph (3) will be reduced by the amount of that excess.

(5) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where P66 agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(6) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(7) In relation to the approved assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system, the undertaker must undertake any necessary remedial work.

(8) In the event that the undertaker does not carry out necessary remedial work in a timely manner then P66 is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

**Commencement Information**

**I42** Sch. 9 para. 42 in force at 1.9.2020, see [art. 1](#)

**43.**—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and P66 must be notified immediately.

(2) Where there is leakage or escape of gas, the undertaker must immediately—

- (a) remove all personnel from the immediate vicinity of the leak;
- (b) inform P66;
- (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
- (d) assist emergency services as may be requested.

**Commencement Information**

**I43** Sch. 9 para. 43 in force at 1.9.2020, see [art. 1](#)

**Compliance with requirements, etc. applying to the protected land** **E+W**

**44.**—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting owners of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

- (a) introduced after the date on which notice of the works was given under paragraph 40; or

**Changes to legislation:** There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)

(b) determined by the expert following a determination under paragraph 102 to unreasonably—

- (i) create significant engineering, technical or programming difficulties; or
- (ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

**Commencement Information**

**I44** Sch. 9 para. 44 in force at 1.9.2020, see [art. 1](#)

**Restriction on exercising powers** **E+W**

**45.** The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on P66, including any disruption to access and supplies of utilities and other services that are required by P66 in order to carry out its operations.

**Commencement Information**

**I45** Sch. 9 para. 45 in force at 1.9.2020, see [art. 1](#)

**Insurance** **E+W**

**46.—**(1) Before carrying out any part of the authorised development on the protected land, the undertaker must put in place a policy of insurance with a reputable insurer against its liabilities under paragraph 48 in accordance with the terms and level of cover notified under sub-paragraph (2) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under paragraph 102, and evidence of that insurance must be provided on request to P66.

(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify P66 of details of the terms of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

(3) The undertaker must maintain insurance in relation to the authorised development affecting P66 during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover specified in sub-paragraph (2) or at such level as may otherwise be determined by an expert under paragraph 102.

**Commencement Information**

**I46** Sch. 9 para. 46 in force at 1.9.2020, see [art. 1](#)

**47.** If P66 has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 46—

- (a) P66 may refer the matter to an expert for determination under paragraph 102; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under

paragraph 102 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

#### Commencement Information

**I47** Sch. 9 para. 47 in force at 1.9.2020, see [art. 1](#)

#### Costs **E+W**

**48.—(1)** The undertaker must repay to P66 all reasonable fees, costs, charges and expenses reasonably incurred by them in relation to these protective provisions in respect of—

- (a) authorisation of works details submitted by the undertaker under paragraph 36 and the imposition of conditions under paragraph 38;
- (b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 40;
- (c) the repair and testing of a pipeline or protected crossing under paragraph 42; and
- (d) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 46,

including the reasonable costs incurred by P66 in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to P66 to carry out its functions under these protective provisions.

(2) The undertaker must indemnify and keep P66 indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage which may be occasioned or reasonably incurred by P66—

- (a) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it; 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 the construction, operation, maintenance, repair and decommissioning of the authorised development,

and the fact that any act or thing may have been done by P66 on the protected land on behalf of the undertaker or in accordance with plans approved by or on behalf of P66 or in accordance with any requirement of the engineer appointed by P66 or under his supervision does not (if it was done without negligence on the part of P66 or of any person in their employ or of its contactors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(3) P66 must give the undertaker reasonable notice of any claim or demand under sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(4) P66 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 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 under this Part of this Schedule.

(5) In the assessment of any sums payable to P66 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, P66 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.

**Changes to legislation:** There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)

**Commencement Information**

**I48** Sch. 9 para. 48 in force at 1.9.2020, see [art. 1](#)

**Further protection in relation to the exercise of powers under the Order** **E+W**

**49.** The undertaker must give written notice to P66 of the terms and level of cover of any guarantee or alternative form of security put in place and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

**Commencement Information**

**I49** Sch. 9 para. 49 in force at 1.9.2020, see [art. 1](#)

**50.** The undertaker must give written notice to P66 if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 7 (consent to transfer 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**

**I50** Sch. 9 para. 50 in force at 1.9.2020, see [art. 1](#)

**51.** The undertaker must, when requested to do so by P66, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 39 (certification of plans etc.) in the form of a computer disc with read only memory or such other format as may be agreed between the relevant parties.

**Commencement Information**

**I51** Sch. 9 para. 51 in force at 1.9.2020, see [art. 1](#)

**52.** Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to P66.

**Commencement Information**

**I52** Sch. 9 para. 52 in force at 1.9.2020, see [art. 1](#)

**Exercise of the specified rights** **E+W**

**53.**—(1) Before commencing any part of a specified work the undertaker must submit the works details to P66.

(2) The works details submitted under sub-paragraph (1) will be treated as having been received by P66 on the date—

- (a) that the undertaker obtains written acknowledgement of receipt from P66; or
- (b) two clear working days following the date that the work details were submitted under sub-paragraph (1),

whichever is earliest.

(3) The undertaker must as soon as reasonably practicable provide such further particulars as P66 may, within 60 days from the receipt of the works details under sub-paragraph (2), reasonably require.

**Commencement Information**

**I53** Sch. 9 para. 53 in force at 1.9.2020, see [art. 1](#)

**54.** No part of a specified work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that specified work under paragraph 53 have been authorised by P66; or
- (b) the works details supplied in respect of that specified work under paragraph 53 have been authorised by an expert under paragraph 56(3) or
- (c) authorisation is deemed to have been given in accordance with paragraph 56(1).

**Commencement Information**

**I54** Sch. 9 para. 54 in force at 1.9.2020, see [art. 1](#)

**55.—(1)** Any authorisation by P66 required under paragraph 54(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as P66 may require to be made for—

- (a) the continuing safety and operation or viability of the specified asset; and
- (b) the requirement for P66 to have—
  - (i) uninterrupted and unimpeded emergency access with or without vehicles to the specified asset at all times; and
  - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the specified asset.

(2) Where P66 can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the HOR it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of P66 that the authorised development will not significantly adversely affect the safety of the HOR.

(3) The authorised development must be carried out in accordance with the works details authorised under paragraph 54 and any conditions imposed on the authorisation under sub-paragraph (1).

(4) Where there has been a reference to an expert in accordance with paragraph 56(2) and the expert gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 56(3).

**Commencement Information**

**I55** Sch. 9 para. 55 in force at 1.9.2020, see [art. 1](#)

**56.**—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 53(1) within 60 days of receipt by P66 under paragraph 53(2) and no further particulars have been requested under paragraph 53(3); or
- (b) authorisation has not been given within 45 days of receipt by P66 of the further particulars supplied under paragraph 53(3),

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 55(1); or
- (b) the undertaker considers that P66 has given its authorisation under paragraph 55(1) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under paragraph 102.

(3) Where the matter is referred to an expert under sub-paragraph (2) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 55(1).

(4) Where the undertaker considers that P66 has unreasonably withheld its authorisation under sub-paragraph (2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association for determination under paragraph 102.

**Commencement Information**

**I56** Sch. 9 para. 56 in force at 1.9.2020, see [art. 1](#)

**57.** In the exercise of the specified rights the undertaker must—

- (a) take all reasonable and proper precautions to ensure that damage to property located on any part of the P66 land is minimised or avoided so far as reasonably practicable including to any structures in, on or under that land or to any drains or other conducting media on or under it;
- (b) cause the least practicable disturbance to or interference with the business and operations of P66;
- (c) ensure that all maintenance work is carried out under the supervision of an engineer acting on behalf of the undertaker who will appoint a local representative to supervise the execution of the works and to maintain contact with P66;
- (d) provide P66 with the name, address and telephone number of the person appointed under sub-paragraph (c); and
- (e) accept responsibility for the actions and omissions of its contractors and of their subcontractors and of all persons employed in connection with works, except for actions carried out or omissions directed expressly at the request of P66.



**Commencement Information**

**I57** Sch. 9 para. 57 in force at 1.9.2020, see [art. 1](#)

**58.** The undertaker must with all practicable speed reinstate and put any part of the P66 land opened or broken up in the exercise of the specified rights into as good a condition in all respects so far as is reasonably practicable as it was in before it was opened or broken up.

**Commencement Information**

**I58** Sch. 9 para. 58 in force at 1.9.2020, see [art. 1](#)

**59.** The undertaker must following a written request by P66 replace or restore any growing crops, trees, hedges, bushes or plants removed in the exercise of the specified rights, except where in the reasonable opinion of the undertaker they may cause damage to the VPI apparatus.

**Commencement Information**

**I59** Sch. 9 para. 59 in force at 1.9.2020, see [art. 1](#)

**60.** The undertaker must keep the VPI apparatus in good and substantial repair and condition in accordance with good industry practice.

**Commencement Information**

**I60** Sch. 9 para. 60 in force at 1.9.2020, see [art. 1](#)

**61.** In exercising the specified rights the undertaker must at its own cost comply with all applicable legislation.

**Commencement Information**

**I61** Sch. 9 para. 61 in force at 1.9.2020, see [art. 1](#)

**62.** The undertaker must as soon as reasonably practicable following a written request from P66 provide written information in relation to the VPI apparatus, the VPI pipeline corridor, compliance with applicable legislation, or the exercise of the specified rights or any activity incidental thereto, in each case as P66 may reasonably require.

**Commencement Information**

**I62** Sch. 9 para. 62 in force at 1.9.2020, see [art. 1](#)

**63.** The undertaker must indemnify P66 against losses incurred or sustained directly as a consequence of or in connection with any [<sup>F15</sup>breach of any of the obligations] on the part of the undertaker in this Part of this Schedule or any act or omission of the undertaker, its employees, contractors or agents or any person acting expressly or impliedly with the undertaker's authority or permission including all costs and expenses incurred by P66 in connection with any steps it may take to remedy any breach by the undertaker under this Part of this Schedule.

**Changes to legislation:** There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)

**Textual Amendments**

**F15** Words in Sch. 9 para. 63 substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

**Commencement Information**

**I63** Sch. 9 para. 63 in force at 1.9.2020, see art. 1

**64.** The undertaker must permit P66 and its agents, contractors and workmen and others authorised by P66 with all necessary plant, machinery and equipment at all times in cases of emergency and otherwise at any reasonable times on reasonable prior written notice to enter the VPI pipeline corridor for such period as is reasonably necessary to examine the VPI pipeline corridor;

**Commencement Information**

**I64** Sch. 9 para. 64 in force at 1.9.2020, see [art. 1](#)

**65.** P66 must take all reasonable and proper precautions to ensure that in undertaking any examination pursuant to paragraph 64 any damage to the VPI apparatus is avoided or minimised.

**Commencement Information**

**I65** Sch. 9 para. 65 in force at 1.9.2020, see [art. 1](#)

**66.** P66 must—

- (a) not erect construct or place any building or structure, carry out any excavation or plant or suffer to be planted or otherwise permit to subsist any trees on the VPI pipeline corridor without the written consent of the undertaker;
- (b) not materially raise or lower the existing level of the surface of the VPI pipeline corridor without the written consent of the undertaker;
- (c) not undermine or damage the VPI apparatus, the VPI pipeline corridor or take such other action as may interfere with the use and free flow and passage of the relevant media through the VPI apparatus or to do anything which would reasonably foreseeably inhibit or prevent the undertaker from complying with this Part of this Schedule;
- (d) on all occasions when P66 may suffer any loss or anticipate or receive any third party claim against it resulting from any action by the undertaker or in any way arising out of the existence of the VPI apparatus P66 will use all reasonable endeavours to mitigate its losses; and
- (e) have due regard in the light of information made available in writing by the undertaker and to the safety and integrity of the VPI apparatus in carrying out operations on any part of the P66 land.

**Commencement Information**

**I66** Sch. 9 para. 66 in force at 1.9.2020, see [art. 1](#)

**67.** The undertaker must take all reasonable precautions to ensure that other than authorised discharges no hazardous material leaks, spills or escapes are discharged from the VPI apparatus and

that no contamination will occur as a result of the use by the undertaker of the pipeline corridor or the exercise of its specified rights.

**Commencement Information**

**I67** Sch. 9 para. 67 in force at 1.9.2020, see [art. 1](#)

**68.**—(1) The undertaker must indemnify and keep P66 indemnified from and against all losses incurred in respect of any contamination in or on the VPI pipeline corridor or which escapes or migrates from the VPI pipeline corridor to the HOR which relates to the exercise of the specified rights.

(2) The undertaker is not liable under sub-paragraph (1) in respect of any contamination unless P66 gives written notice to the undertaker providing reasonable particulars of the basis of its claim including an estimate of the amount of such claim.

(3) P66 must give written notice under sub-paragraph (2) as soon as reasonably practicable.

**Commencement Information**

**I68** Sch. 9 para. 68 in force at 1.9.2020, see [art. 1](#)

**69.**—(1) If during the exercise of the specified rights it appears to the undertaker that there is contamination in or on the VPI pipeline corridor the undertaker must give written notice of such contamination to P66.

(2) On receipt of such written notice under sub-paragraph (1) the undertaker and P66 may jointly instruct environmental consultants in terms agreed between the parties to produce and implement a scheme of works.

**Commencement Information**

**I69** Sch. 9 para. 69 in force at 1.9.2020, see [art. 1](#)

**70.** P66 must use its reasonable endeavours to comply at the cost of the undertaker and (save in the case of emergency) upon notice with all reasonable written requests of the undertaker in relation to the use of the VPI pipeline corridor that are requested for the safety and protection of the VPI apparatus.

**Commencement Information**

**I70** Sch. 9 para. 70 in force at 1.9.2020, see [art. 1](#)

**71.**—(1) Subject to sub-paragraph (2) P66 must not make any admission of liability to a third party making or bringing a claim, demand or proceedings or settle or compromise it without the consent in writing of the undertaker, such consent not be unreasonably withheld or delayed.

(2) Sub-paragraph (1) does not apply to the extent that such conduct is contrary to what is required by law or by any authority or compliance with the sub-paragraph would have an adverse effect on the liabilities or goodwill of P66.

(3) The undertaker is entitled, with the consent of P66 (such consent not to be unreasonably withheld or delayed unless to give such consent might reasonably be considered likely to have a

**Changes to legislation:** There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)

materially adverse effect on the liabilities or goodwill of P66), to negotiate a settlement of any claim, demand or proceedings against P66 and to conduct on behalf of P66 any litigation which may arise in respect of the claim, demand or proceedings.

**Commencement Information**

**I71** Sch. 9 para. 71 in force at 1.9.2020, see [art. 1](#)

**72.** The undertaker is not required to comply with this Part of this Schedule in a case of emergency but in that case it must give to P66 notice as soon as is reasonably practicable of the emergency and must comply with this Part of this Schedule in so far as is reasonably practicable in the circumstances.

**Commencement Information**

**I72** Sch. 9 para. 72 in force at 1.9.2020, see [art. 1](#)

**73.** Any information or data obtained by the undertaker from carrying out activities under this Part of this Schedule must be treated by the undertaker as confidential and must only be disclosed to a third party who is connected with the undertaker's activities and who needs the relevant information or data, or it may be disclosed with the consent of P66 or where the undertaker is required to disclose information or data by law or by a court of law or other competent authority.

**Commencement Information**

**I73** Sch. 9 para. 73 in force at 1.9.2020, see [art. 1](#)

**74.** Where any trees are removed by the undertaker in carrying out a specified work, all timber will remain the property of P66 and will be cut and disposed of in accordance with the reasonable requirements of P66.

**Commencement Information**

**I74** Sch. 9 para. 74 in force at 1.9.2020, see [art. 1](#)

**75.** Where timber is cut and disposed of by the undertaker pursuant to paragraph 74 the undertaker will compensate P66 for any loss thereby properly and reasonably incurred.

**Commencement Information**

**I75** Sch. 9 para. 75 in force at 1.9.2020, see [art. 1](#)

**76.** Unless otherwise agreed between the undertaker and P66, any fencing required for the purposes of exercising the specified rights will comprise of a demarcation fence of posts and wire provided that where necessary such fencing complies with any requirement of any statutory or other body or pursuant to any statute or other obligation.

**Commencement Information**

**I76** Sch. 9 para. 76 in force at 1.9.2020, see [art. 1](#)

77. All temporary fencing will be maintained in position during the carrying out of any specified work and until reinstatement and will then be removed by and at the cost of the undertaker (unless otherwise agreed with P66).

**Commencement Information**

**I77** Sch. 9 para. 77 in force at 1.9.2020, see [art. 1](#)

78. In exercising the specified rights, and if reasonably required by P66—

- (a) topsoil excavated during a specified work will be kept apart from all other excavated material and will not be run over by any machinery and all cultivated turf will be carefully reinstated or replaced with turf of equivalent quality;
- (b) all trenches dug during a specified work will be backfilled as soon as reasonably practicable and care will be taken to ensure that backfill material is properly consolidated in accordance with good industry practice;
- (c) excavated material will be replaced with topsoil uppermost so as to restore the working area to its former condition so far as is reasonably practicable and no large stones are left on the surface after reinstatement of the trench;
- (d) large stones and any surplus subsoil will be removed by the undertaker where specifically requested by P66 and where deemed by the undertaker to be necessary;
- (e) all construction debris, tools, equipment, temporary work and litter will be removed from the working area around a specified work as soon as reasonably practicable;
- (f) the topsoil of agricultural land will be left in a loose and workable condition to its full depth; and
- (g) compacted subsoil will be loosened with a cultivator where the topsoil has been removed and before it is replaced.

**Commencement Information**

**I78** Sch. 9 para. 78 in force at 1.9.2020, see [art. 1](#)

79. Where the undertaker is to relay or move any length of the existing gas pipeline it will be laid to contour at a depth of not less than 1.1 metres from the ground surface to the top of the pipeline and where this depth cannot reasonably be achieved by the undertaker it will give written details of this to P66.

**Commencement Information**

**I79** Sch. 9 para. 79 in force at 1.9.2020, see [art. 1](#)

80. Wherever the exercise of the specified rights may reasonably require it, temporary underpinning, supports and other protective measures for buildings, structures and apparatus in or adjacent to the pipeline trench will be of proper design and sound construction and will be securely placed to the reasonable satisfaction of P66 and in accordance with good industry practice.

**Commencement Information**

**I80** Sch. 9 para. 80 in force at 1.9.2020, see [art. 1](#)

**Changes to legislation:** There are currently no known outstanding effects for the *The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9.* (See end of Document for details)

**81.** Where the existing gas pipeline crosses below<sup>F16</sup>... a ditch or stream it will be protected by a concrete slab and the pipe will be located at such a depth so as to provide at least 1.1 metres cover from the true cleaned bottom of the ditch or stream to the top of the pipe. All ditches, open drains or watercourses interfered with by the exercise of the specified rights will be maintained in effective condition during works by the undertaker and restored to as good a condition as before the commencement of the works.

#### Textual Amendments

**F16** Sch. 9 para. 81 full stop omitted (17.5.2021) by virtue of [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

#### Commencement Information

**I81** Sch. 9 para. 81 in force at 1.9.2020, see art. 1

**82.** With the assistance of P66 in locating water supplies, the undertaker will use all reasonable endeavours to ensure that existing water supplies, drainage systems and any other services are not interrupted or detrimentally affected during the exercise of the specified rights, failing which the undertaker will make good all damage caused to the reasonable satisfaction of P66 or make available an adequate and unpolluted alternative supply or system as the case may require. Supplies of water to stock will not be completely withdrawn without the written consent of P66. The undertaker will take all reasonable practicable steps to prevent the pollution of water supplies or watercourses. In the event of such pollution occurring because of the exercise of the specified rights, the undertaker will pay compensation to P66 in respect of any costs, claims, damage or expenses arising.

#### Commencement Information

**I82** Sch. 9 para. 82 in force at 1.9.2020, see [art. 1](#)

**83.** Particular care will be taken to ensure that minimum damage or disturbance to land drains is caused by the exercise of the specified rights. The position of all land drains cut or disturbed during excavation will be prominently marked by pegs at both sides of the trench immediately following their location. Such land drains will also be logged and a subsequent land drainage record kept by the undertaker for future reference. The undertaker will engage a land drainage expert to design appropriate pre-construction drainage, where necessary, and also any necessary land drainage reinstatement. The methods to be employed in repairing damage to field drainage systems will be agreed with P66 and, failing agreement, will be referred to an expert in accordance with [<sup>F17</sup>paragraph 102 (expert determination)] .

#### Textual Amendments

**F17** Words in [Sch. 9 para. 83](#) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

#### Commencement Information

**I83** Sch. 9 para. 83 in force at 1.9.2020, see art. 1

**84.** The installation of marker posts or cathodic protection marker posts will wherever reasonably practicable be sited by agreement between the undertaker and P66. As far as is reasonably practicable marker posts will be sited in or adjacent to hedges or fences. If P66 so requires, marker posts will

be placed on both sides of fences or hedges. All marker posts will be properly maintained and the undertaker will take all reasonable steps to ensure that marker posts remain visible at all times.

**Commencement Information**

**184** Sch. 9 para. 84 in force at 1.9.2020, see [art. 1](#)

**85.**—(1) The undertaker must ensure that the existing gas pipeline is cathodically protected against corrosion and any buildings and structures within HOR likely to be affected will be suitably protected provided reasonable facilities are given by P66 for this to be done.

(2) Sub-paragraph (1) does not require the undertaker to do anything in respect of pipes, cables or like apparatus or any building or structure laid or constructed after the existing gas pipeline was first laid.

**Commencement Information**

**185** Sch. 9 para. 85 in force at 1.9.2020, see [art. 1](#)

**86.** During the course of the exercise of the specified rights, the undertaker must regard fossils, coins or other articles of value which are discovered as being the property of P66 and will acknowledge that P66 will not be deemed to have surrendered (whether to the undertaker or its contractors) any right to any reward under the Treasure Act 1996. The undertaker will make all reasonable efforts to comply with the reasonable requirements of P66 with respect to such objects (and will oblige its contractors to do so) provided that P66 will pay any costs reasonably incurred by the undertaker in so doing.

**Commencement Information**

**186** Sch. 9 para. 86 in force at 1.9.2020, see [art. 1](#)

**87.** In exercising the specified rights, the undertaker must provide specific instructions to the contractor to notify them that the contractors workers cannot trespass outside the working area or any access to it.

**Commencement Information**

**187** Sch. 9 para. 87 in force at 1.9.2020, see [art. 1](#)

**88.** In the event that the undertaker decides to abandon the whole or any part of the existing gas pipeline through the HOR, the undertaker must purge the relevant part of the existing gas pipeline and otherwise render it permanently safe and harmless, and must provide reasonable details of the works undertaken to P66.

**Commencement Information**

**188** Sch. 9 para. 88 in force at 1.9.2020, see [art. 1](#)

**89.** The undertaker must not permit caravans or huts to be brought on to the VPI pipeline corridor for sleeping accommodation and will ensure that all workmen leave the VPI pipeline corridor at the conclusion of their duties each day.

*Changes to legislation: There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)*

**Commencement Information**

**I89** Sch. 9 para. 89 in force at 1.9.2020, see [art. 1](#)

**90.** A specified work will normally cease at or before dusk but in the event of work continuing beyond dusk P66 will be notified in writing in advance.

**Commencement Information**

**I90** Sch. 9 para. 90 in force at 1.9.2020, see [art. 1](#)

**91.** The undertaker will not light fires on the VPI pipeline corridor without the consent of P66.

**Commencement Information**

**I91** Sch. 9 para. 91 in force at 1.9.2020, see [art. 1](#)

**92.** Whenever the undertaker intends to use explosives in connection with the exercise of the specified rights, reasonable notice of such intention must be given to P66 of the working area including notice of the timing of blasting operations.

**Commencement Information**

**I92** Sch. 9 para. 92 in force at 1.9.2020, see [art. 1](#)

**Diversion Provisions** **E+W**

**93.** In the following provisions of this Part of this Schedule the described land excludes the CHP land unless and until P66 has permanent occupational control of the CHP land (excluding land in which rights have been acquired by the undertaker under article 21 of the Order).

**Commencement Information**

**I93** Sch. 9 para. 93 in force at 1.9.2020, see [art. 1](#)

- 94.** If P66 wishes to carry out any development of the described land it must—
- (a) supply to the undertaker full details of the proposed development in writing as soon as reasonably possible and in any event not less than two months before the submission of the planning application for the proposed development and keep the undertaker reasonably informed in writing of the progress of the planning application;
  - (b) have due regard to any reasonable proposals of the undertaker for the purpose of safeguarding the VPI apparatus and minimising the interference to the VPI apparatus and its use; and
  - (c) use its reasonable endeavours with the assistance (if requested) of the undertaker (whose assistance is to be at no cost to P66) to arrange the development so as to avoid the diversion of the VPI apparatus, and must consult with the undertaker and have due regard to the undertaker's comments and representations.



**Commencement Information**

**194** Sch. 9 para. 94 in force at 1.9.2020, see [art. 1](#)

**95.** P66 must submit a copy to the undertaker of any P66 planning permission for development in on over or under the described land within a period of 28 days of receipt of the decision.

**Commencement Information**

**195** Sch. 9 para. 95 in force at 1.9.2020, see [art. 1](#)

- 96.**—(1) If following consultation under paragraph 94—
- (a) a P66 planning permission is granted but the development is prevented for any reason relating to the presence or position of the VPI apparatus or by such P66 planning permission being made subject to a condition which prevents the development for any reason related to the position of the VPI apparatus or renders it unviable; or
  - (b) a P66 planning permission for the development is refused for any reason related to the position of the VPI apparatus or the existence or effect of a relevant plan provision,
- then P66 must give written notice to the undertaker.
- (2) Any notice given pursuant to sub-paragraph (1) must state whether P66—
- (a) intends to submit a further planning application, planning appeal or other representation to the relevant planning authority which seeks to address the reason that is preventing the development or rendering it unviable or that has otherwise resulted in the refusal of the P66 planning permission (insofar as such reason relates to the position of the VPI apparatus); or
  - (b) requires the diversion of the VPI apparatus or part of the VPI apparatus.
- (3) Where P66 gives written notice that it intends to submit a further planning application, planning appeal or other submission to the local planning authority—
- (a) the undertaker must use reasonable endeavours to assist P66 so far as matters relate to the VPI apparatus; and
  - (b) P66 must comply with the requirements under paragraph 94.
- (4) Any diversion of the VPI apparatus pursuant to sub-paragraph (1) must be only the extent of diversion that is required in order to ensure that the development notified by P66 to the undertaker pursuant to paragraph 94 is not prevented.
- (5) Following receipt of the notice under sub-paragraph (1) the undertaker must confirm in writing to P66 within three months of the date of receipt of the notice whether it will either—
- (a) carry out such works to the VPI apparatus as may be necessary so that the position of the VPI apparatus does not materially affect the development; or
  - (b) divert the VPI apparatus or part of it along the diversion route.

**Commencement Information**

**196** Sch. 9 para. 96 in force at 1.9.2020, see [art. 1](#)

**97.**—(1) If P66 obtains a P66 planning permission for the development but does not give notice in accordance with paragraph 96 it must nevertheless notify the undertaker that a P66 planning permission has been obtained and provide a copy of it to the undertaker.

**Changes to legislation:** There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)

(2) If following receipt of the notice under sub-paragraph (1) the undertaker is of the reasonable opinion that the development would be likely to cause damage to the VPI apparatus or any interference with the exercise of the specified rights it may at its sole cost and expense divert the VPI apparatus or part thereof along the diversion route or carry out any such works as are described in paragraph 96(5)(a).

(3) Where the undertaker elects to carry out works under sub-paragraph (2) it is not required to implement any such works before the expiry of the period of six months from the date of the notice under sub-paragraph (1).

**Commencement Information**

**I97** Sch. 9 para. 97 in force at 1.9.2020, see [art. 1](#)

**98.** The diversion route must be within the described land and must be agreed between P66 and the undertaker.

**Commencement Information**

**I98** Sch. 9 para. 98 in force at 1.9.2020, see [art. 1](#)

**99.** If the VPI apparatus is to be diverted under any paragraph of this Part then P66 must grant the necessary rights to the undertaker to carry out the diversion, and to maintain and use the relevant diverted VPI apparatus.

**Commencement Information**

**I99** Sch. 9 para. 99 in force at 1.9.2020, see [art. 1](#)

**100.** Subject to paragraph 97(3), where the undertaker elects to carry out works under paragraph 96(5) it must use its reasonable endeavours to carry out such works as soon as reasonably practicable.

**Commencement Information**

**I100** Sch. 9 para. 100 in force at 1.9.2020, see [art. 1](#)

**101.** If there is a dispute about the diversion route or the rights to be granted pursuant to paragraph 98 then either party may refer the matter to an expert for determination under paragraph 102 of this Part of this Schedule.

**Commencement Information**

**I101** Sch. 9 para. 101 in force at 1.9.2020, see [art. 1](#)

**Expert determination** **E+W**

**102.**—(1) Except as provided in sub-paragraph (7), article 42 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed

by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
- (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;
- (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (i) the constructability notes; and
- (j) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

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#### **Commencement Information**

**1102** Sch. 9 para. 102 in force at 1.9.2020, see [art. 1](#)

#### **Service of Notices** **E+W**

**103.**—(1) P66 must as soon as reasonably practicable following a written request from the undertaker provide details of the P66 address and P66 email.

**Changes to legislation:** There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)

(2) A notice or other document required or authorised to be served on P66 under this Part of the Schedule (except under sub-paragraph (1)) must be served—

- (a) by post to the P66 address; and
- (b) by electronic transmission to the P66 email,

or to such other postal or electronic mail address which P66 may from time to time notify to the undertaker.

(3) In the event that P66 does not provide the P66 address and P66 email within 14 days of the undertaker's request pursuant to sub-paragraph (1) then sub-paragraph (2) does not apply and the undertaker must—

- (a) serve any notice or document on P66 at its registered office; and
- (b) send a copy of such notice or document to the HOR marked for the attention of the refinery manager.

**Commencement Information**

**I103** Sch. 9 para. 103 in force at 1.9.2020, see [art. 1](#)

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

**FOR THE PROTECTION OF ANGLIAN WATER**

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

**Commencement Information**

**I104** Sch. 9 para. 104 in force at 1.9.2020, see [art. 1](#)

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

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

“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;

“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.

#### Commencement Information

**I105** Sch. 9 para. 105 in force at 1.9.2020, see [art. 1](#)

**106.** The undertaker must not interfere with, build over or near to any apparatus within the Order land or carry out the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or carry out 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 relevant pipe or apparatus—

- (a) [<sup>F18</sup>2.25 metres] where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres,

unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker in writing.

#### Textual Amendments

**F18** Words in [Sch. 9 para. 106\(a\)](#) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), [art. 1](#), [Sch.](#)

#### Commencement Information

**I106** Sch. 9 para. 106 in force at 1.9.2020, see [art. 1](#)

**107.** The alteration, extension, removal or re-location of any apparatus must not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation and any other associated consents are obtained by the undertaker, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be carried out only in accordance with the plan and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water <sup>F19</sup>... for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

#### Textual Amendments

**F19** Words in [Sch. 9 para. 107\(b\)](#) omitted (17.5.2021) by virtue of [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), [art. 1](#), [Sch.](#)

#### Commencement Information

**I107** Sch. 9 para. 107 in force at 1.9.2020, see [art. 1](#)

**Changes to legislation:** There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)

**108.** 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, an alteration or extension must not 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.

**Commencement Information**

**I108** Sch. 9 para. 108 in force at 1.9.2020, see [art. 1](#)

**109.** Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement with Anglian Water, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, 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 42 (arbitration).

**Commencement Information**

**I109** Sch. 9 para. 109 in force at 1.9.2020, see [art. 1](#)

**110.** If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker must 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.

**Commencement Information**

**I110** Sch. 9 para. 110 in force at 1.9.2020, see [art. 1](#)

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

**Commencement Information**

**I111** Sch. 9 para. 111 in force at 1.9.2020, see [art. 1](#)

**112.** If for any reason or in consequence of the construction of any of the works referred to in paragraphs 107 to 109 and 111 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 must—

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

**Commencement Information**

**I112** Sch. 9 para. 112 in force at 1.9.2020, see [art. 1](#)

**113.** Anglian Water must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, penalties and costs to which the provisions of this Part 5 apply. If requested to do so by the undertaker, Anglian Water shall provide an explanation of how any claim has been minimised. The undertaker shall only be liable under paragraph 112 for claims reasonably incurred by Anglian Water.

**Commencement Information**

**I113** Sch. 9 para. 113 in force at 1.9.2020, see [art. 1](#)

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

### **FOR THE PROTECTION OF CLH PIPELINE SYSTEM (CLH-PS) LTD**

**114.** For the protection of CLH Pipeline System (CLH-PS) Limited, the following provisions, unless otherwise agreed in writing between the undertaker and CLH Pipeline System (CLH-PS) Ltd, have effect.

**Commencement Information**

**I114** Sch. 9 para. 114 in force at 1.9.2020, see [art. 1](#)

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

“CLH” means CLH Pipeline System (CLH-PS) Ltd (company number 09497223); and

“the pipeline” means the pipeline crossing the Order limits owned and operated by CLH 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 pipeline as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962.

**Commencement Information**

**I115** Sch. 9 para. 115 in force at 1.9.2020, see [art. 1](#)

**116.** Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the pipeline and access to it, the undertaker must submit to CLH plans and sections of the proposed works and such further particulars as CLH may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

**Commencement Information**

**I116** Sch. 9 para. 116 in force at 1.9.2020, see [art. 1](#)

**117.** No works comprising any part of the authorised development which would have an effect on the operation, maintenance or abandonment of the pipeline and access to it are to be commenced

*Changes to legislation: There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)*

until plans and sections in respect of those works submitted under paragraph 116 have been approved by CLH.

**Commencement Information**

**I117** Sch. 9 para. 117 in force at 1.9.2020, see [art. 1](#)

**118.** Any approval of CLH required under paragraph 117 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as CLH may require to be made for—

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

**Commencement Information**

**I118** Sch. 9 para. 118 in force at 1.9.2020, see [art. 1](#)

**PART 7** **E+W**

**FOR THE PROTECTION OF CENTRICA STORAGE LIMITED**

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

**Commencement Information**

**I119** Sch. 9 para. 119 in force at 1.9.2020, see [art. 1](#)

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

“Centrica” means Centrica Storage Limited (company number 03294124); and

“the pipeline” means the pipeline crossing the Order limits owned and operated by Centrica used at various times for the passage of stabilised liquid condensate and all ancillary apparatus including such works and apparatus properly appurtenant to the pipeline as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962.

**Commencement Information**

**I120** Sch. 9 para. 120 in force at 1.9.2020, see [art. 1](#)

**121.** Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the pipeline and access to it, the undertaker must submit to Centrica plans and sections of the proposed works and such further particulars as Centrica may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

**Commencement Information**

**I121** Sch. 9 para. 121 in force at 1.9.2020, see [art. 1](#)



**122.** At the same time as providing the plans and sections to Centrica pursuant to paragraph 121, the undertaker must also provide a copy of the construction traffic management plan and the construction environmental management plan, in each case being the document approved by the relevant planning authority pursuant to the requirements or where no such approval has been given at that time, the draft of the relevant document.

**Commencement Information**

**I122** Sch. 9 para. 122 in force at 1.9.2020, see [art. 1](#)

**123.** No works comprising any part of the authorised development which would have an effect on the operation, maintenance or abandonment of the pipeline and access to it are to be commenced until plans and sections in respect of those works submitted under paragraph 121 have been approved by Centrica.

**Commencement Information**

**I123** Sch. 9 para. 123 in force at 1.9.2020, see [art. 1](#)

**124.** Any approval of Centrica required under paragraph 123 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Centrica may require to be made for—

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

**Commencement Information**

**I124** Sch. 9 para. 124 in force at 1.9.2020, see [art. 1](#)

**125.—**(1) Subject to sub-paragraphs (2) to (5), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to the pipeline (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 Centrica; or
- (b) there is any interruption in the supply of the service provided by Centrica,

the undertaker must bear and pay the cost reasonably incurred by Centrica in making good such damage or restoring the supply and make reasonable compensation to Centrica for any other direct expenses, loss, damages, penalty or other direct costs incurred by it, 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 Centrica, its officers, servants, contractors or agents.

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

(4) The total liability of the undertaker in respect of this paragraph 125 shall be limited to the sum of ten million pounds (£10,000,000) for any one event or series of connected events.

**Changes to legislation:** There are currently no known outstanding effects for the *The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9*. (See end of Document for details)

(5) Any difference arising between the undertaker and [F20Centrica] under this Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

#### Textual Amendments

**F20** Word in [Sch. 9 para. 125\(5\)](#) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

#### Commencement Information

**I125** [Sch. 9 para. 125](#) in force at 1.9.2020, see art. 1

## PART 8 **E+W**

### FOR THE PROTECTION OF ABLE HUMBER PORTS LIMITED

**126.** For the protection of Able Humber Ports Limited (company no. 107029) as referred to in this Part of this Schedule the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Able.

#### Commencement Information

**I126** [Sch. 9 para. 126](#) in force at 1.9.2020, see [art. 1](#)

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

“Able” means Able Humber Ports Limited (company no. 107029) whose registered office is at 44 Esplanade, St Helier, Jersey JE4 9WG;

“the Able authorised development” means the development authorised by the Able Order;

“the Able Order” means the Able Marine Energy Park Development Consent Order 2014 <sup>M5</sup>;

“the Able Order land” means the Order land (as defined in the Able Order) or any part of it;

“the Able Order limits” means the Order limits as defined in the Able Order;

“the OCGT authorised development” means the development authorised by this Order; and

“the respective authorised developments” means the OCGT authorised development and the Able authorised development.

#### Commencement Information

**I127** [Sch. 9 para. 127](#) in force at 1.9.2020, see [art. 1](#)

#### Marginal Citations

**M5** [S.I. 2014/2935](#)

### Co-operation during construction **E+W**

**128.** The undertaker must not exercise the powers granted under this Order so as to hinder or prevent—

- (a) the construction, operation, use or maintenance of the Able authorised development; or
- (b) access to all parts of the Able authorised development,

otherwise than with the prior written consent of Able.

**Commencement Information**

**I128** Sch. 9 para. 128 in force at 1.9.2020, see [art. 1](#)

**129.** If the undertaker proposes to alter the layout of the existing highway access points within plots 2, 8 or 9, it must not submit written details for numbered work 2 so far as it is within those plots for approval to the relevant planning authority in accordance with requirement 5(3) or requirement 8(1) without first obtaining the written consent of Able in respect of the design and layout of the relevant part of numbered work 2.

**Commencement Information**

**I129** Sch. 9 para. 129 in force at 1.9.2020, see [art. 1](#)

**130.** The undertaker must not submit written details for numbered work 6 so far as it is within plots 6 or 7 for approval to the relevant planning authority in accordance with requirement 5(6) without first obtaining the written consent of Able in respect of the siting, design and layout of the relevant part of numbered work 6.

**Commencement Information**

**I130** Sch. 9 para. 130 in force at 1.9.2020, see [art. 1](#)

**131.—(1)** The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (2) over or in respect of the Able Order land otherwise than with the prior written consent of Able.

(2) The articles referred to in sub-paragraph (1) are—

- (a) article 8 (power to alter layout etc. of streets);
- (b) article 9 (street works);
- (c) article 10 (construction and maintenance of new or altered means of access);
- (d) article 11 (temporary prohibition or restriction of use of streets);
- (e) article 12 (access to works);
- (f) article 14 (traffic regulation);
- (g) article 16 (authority to survey and investigate the land);
- (h) article 18 (compulsory acquisition of land);
- (i) article 19 (power to override easements and other rights);
- (j) article 21 (compulsory acquisition of rights etc.);
- (k) article 22 (private rights);
- (l) article 26 (rights under or over streets);
- (m) article 27 (temporary use of land for carrying out the authorised development);
- (n) article 28 (temporary use of land for maintaining the authorised development); and
- (o) article 29 (statutory undertakers).

*Changes to legislation: There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)*

(3) In the event that Able withholds its consent pursuant to sub-paragraph (1) it must notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

**Commencement Information**

**I131** Sch. 9 para. 131 in force at 1.9.2020, see [art. 1](#)

**132.**—(1) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Able, that approval or consent must be in writing (and subject to such reasonable terms and conditions as Able may require), and must not be unreasonably withheld or delayed.

(2) In the event that Able does not respond in writing to a request for approval or consent within 28 days of receipt of such a request, Able is deemed to have given its consent, without any terms or conditions.

**Commencement Information**

**I132** Sch. 9 para. 132 in force at 1.9.2020, see [art. 1](#)

**133.**—(1) Insofar as the construction of the OCGT authorised development is or may be undertaken concurrently with the Able authorised development, the undertaker must—

- (a) co-operate with Able with a view to ensuring—
  - (i) the co-ordination of construction programming and the carrying out of works; and
  - (ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and Able and their respective contractors; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

**Commencement Information**

**I133** Sch. 9 para. 133 in force at 1.9.2020, see [art. 1](#)

**Arbitration** **E+W**

**134.** Any difference or dispute arising between the undertaker and Able under this Part of this Schedule will, unless otherwise agreed in writing between the undertaker and Able, be referred to and settled by arbitration in accordance with Article 42 (Arbitration).

**Commencement Information**

**I134** Sch. 9 para. 134 in force at 1.9.2020, see [art. 1](#)

## PART 9 **E+W**

### FOR THE PROTECTION OF TOTAL LINDSEY OIL REFINERY LIMITED

**135.** For the protection of Total Lindsey Oil Refinery Limited, the following provisions, unless otherwise agreed in writing between the undertaker and Total Lindsey Oil Refinery Limited, have effect.

#### Commencement Information

**I135** Sch. 9 para. 135 in force at 1.9.2020, see [art. 1](#)

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

“the pipelines” means the pipelines crossing the Order limits owned and operated by TLOR 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) (meaning of “pipe-line”) of the Pipe-lines Act 1962; and

“TLOR” means Total Lindsey Oil Refinery Limited (company number 00564599).

#### Commencement Information

**I136** Sch. 9 para. 136 in force at 1.9.2020, see [art. 1](#)

**137.** Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the pipelines and access to them, the undertaker must submit to TLOR plans and sections of the proposed works and such further particulars as TLOR may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

#### Commencement Information

**I137** Sch. 9 para. 137 in force at 1.9.2020, see [art. 1](#)

**138.** No works comprising any part of the authorised development which would have an effect on the operation, maintenance or abandonment of the pipelines and access to them are to be commenced until plans and sections in respect of those works submitted under paragraph 137 have been approved by TLOR.

#### Commencement Information

**I138** Sch. 9 para. 138 in force at 1.9.2020, see [art. 1](#)

**139.** Any approval of TLOR required under paragraph 138 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as TLOR may require to be made for—

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

**Commencement Information**

**I139** Sch. 9 para. 139 in force at 1.9.2020, see [art. 1](#)

**PART 10** **E+W**

**FOR THE PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED**

**140.** The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail.

**Commencement Information**

**I140** Sch. 9 para. 140 in force at 1.9.2020, see [art. 1](#)

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

“Network Rail” means Network Rail Infrastructure Limited (company registration number 02904587) whose registered office is at 1 Eversholt Street, London NW1 2DN 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 (meaning of “subsidiary” etc) of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993 <sup>M6</sup>) or station lease; and

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

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

**Commencement Information**

**I141** Sch. 9 para. 141 in force at 1.9.2020, see [art. 1](#)

**Marginal Citations**

**M6** 1993 c.43.

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

- (a) article 18 (compulsory acquisition of land);
- (b) article 19 (power to override easements and other rights);
- (c) article 21 (compulsory acquisition of rights etc.);
- (d) article 22 (private rights);
- (e) article 24 (acquisition of subsoil only);
- (f) article 27 (temporary use of land for carrying out the authorised development);

(g) article 28 (temporary use of land for maintaining the authorised development, 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 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communications code operators: preliminary notices) of the 1990 Act, or article 29 (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 pursuant to this paragraph, such consent must not be unreasonably withheld or delayed but may be given subject to reasonable conditions and such consent 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.

**Commencement Information**

**I142** Sch. 9 para. 142 in force at 1.9.2020, see [art. 1](#)

**143.** Any difference or dispute arising between the undertaker and Network Rail under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Network Rail, be determined by arbitration in accordance with article 42 (arbitration).

**Commencement Information**

**I143** Sch. 9 para. 143 in force at 1.9.2020, see [art. 1](#)

**144.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

**Commencement Information**

**I144** Sch. 9 para. 144 in force at 1.9.2020, see [art. 1](#)

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

### **FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER**

#### **Application** **E+W**

**145.** For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

### Commencement Information

**I145** Sch. 9 para. 145 in force at 1.9.2020, see [art. 1](#)

### Interpretation **E+W**

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

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker and/or its contractor(s) to a level as may be approved by Cadent in writing or in the case of dispute in accordance with the terms and level of cover [<sup>F21</sup>determined through arbitration under paragraph 158]. Such insurance shall be maintained for the maintenance period of any specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy shall include (but without limitation)—

- (a) Cadent as a Co-Insured;
- (b) a cross liabilities clause; and
- (c) contractors' pollution liability for third party property damage and third party bodily [<sup>F22</sup>damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;]
- (d) <sup>F23</sup>...

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

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of gas distribution together with any replacement apparatus and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“Cadent” means Cadent Gas Limited and/or its successors in title and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the mitigation measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;



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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“maintenance activity” means the diversion, replacement, relaying, removal, refurbishment, reconstruction or improvement of the high pressure gas pipeline which supplies gas to the authorised development by the undertaker, or any works which would include the breaking of the ground within 15 metres in any direction of any apparatus;

“maintenance period” means the period of time from the commencement of the maintenance activity to the completion of the maintenance activity;

“Order land” has the same meaning as is given to the term “Order land” in article 2 of this Order;

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

“rights” shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“specified works” means any intrusive activities undertaken by the undertaker within the Order land pursuant to the powers in article 19 (Power to override easements and other rights), article 21 (Compulsory acquisition of rights etc.), article 22 (Private rights) and article 29 (Statutory undertakers) which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 150(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 150(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (Cadent's policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of Cadent High pressure Gas pipelines and associated installation requirements for third parties GD/SP/SSW/22”); and

“undertaker” means the undertaker as defined in article 2 of this Order.

#### **Textual Amendments**

- F21** Words in Sch. 9 para. 146 substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)
- F22** Words in Sch. 9 para. 146 inserted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)
- F23** Words in Sch. 9 para. 146 omitted (17.5.2021) by virtue of [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

#### **Commencement Information**

- I146** Sch. 9 para. 146 in force at 1.9.2020, see [art. 1](#)

### On Street Apparatus **E+W**

**147.**—(1) Except for paragraphs 148 (apparatus of Cadent in stopped up streets), 150 (removal of apparatus) in so far as sub-paragraph (2) applies, 151 (facilities and rights for alternative apparatus) in so far as sub-paragraph (2) below applies, 152 (retained apparatus: protection of Cadent), 153 (expenses) and 154 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Cadent, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraph 150 and 151 of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any Apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

(3) Notwithstanding article 30 (apparatus and rights of statutory undertakers in streets) or any other powers in the Order generally, section 85 of the 1991 Act in relation to cost sharing and the regulations made thereunder shall not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

#### Commencement Information

**I147** Sch. 9 para. 147 in force at 1.9.2020, see [art. 1](#)

### Apparatus of Cadent in stopped up streets **E+W**

**148.**—(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary prohibition or restriction of uses of streets), Cadent will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway.

(2) The protective provisions in this Part of this Schedule apply and take precedence over article 30 (apparatus and rights of statutory undertakers in streets) of the Order which shall not apply to Cadent.

#### Commencement Information

**I148** Sch. 9 para. 148 in force at 1.9.2020, see [art. 1](#)

### Acquisition of land **E+W**

**149.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the specified works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker

acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and the undertaker must use its reasonable endeavours procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such specified works.

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

(4) Any agreement or consent granted by Cadent under paragraph 152 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

#### Commencement Information

**I149** Sch. 9 para. 149 in force at 1.9.2020, see [art. 1](#)

#### Removal of apparatus **E+W**

**150.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 149 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and 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 any apparatus placed in that land, it must give to Cadent advance 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 Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 152(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If 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, Cadent may, 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 assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to do so.

**Changes to legislation:** There are currently no known outstanding effects for the *The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9*. (See end of Document for details)

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

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraphs (2) or (3) [<sup>F24</sup>having been afforded to Cadent] to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

#### Textual Amendments

**F24** Words in Sch. 9 para. 150(5) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, Sch.

#### Commencement Information

**I150** Sch. 9 para. 150 in force at 1.9.2020, see art. 1

### Facilities and rights for alternative apparatus **E+W**

**151.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land [<sup>F25</sup>for the access to, construction and maintenance of alternative apparatus] in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent 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 Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 158 (Arbitration) of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### Textual Amendments

**F25** Words in Sch. 9 para. 151(1) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, Sch.

#### Commencement Information

**I151** Sch. 9 para. 151 in force at 1.9.2020, see art. 1

### Retained apparatus: protection of Cadent **E+W**

**152.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

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

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

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent required under sub-paragraph (3)—

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

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus 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 to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent, 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 145 to 147 and 150 to 151 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 150(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 the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

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

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (11) at all times.

(11) At all times when carrying out any specified works the undertaker must comply with Cadent's policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity

**Changes to legislation:** There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)

of Cadent High pressure Gas pipelines and associated installation requirements for third parties SPGD/SP /SSW22” and HSE's “HS(~G)47 Avoiding Danger from underground services”.

(12) As soon as reasonably practicable after any ground subsidence event attributable to any specified works the undertaker shall implement an appropriate ground mitigation scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 153.

#### Commencement Information

**1152** Sch. 9 para. 152 in force at 1.9.2020, see [art. 1](#)

#### Expenses **E+W**

**153.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or rights or the construction of any new or alternative apparatus which may be required in consequence of the execution of any specified works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 150(3) if it elects to do so; and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any specified works;
- (g) any watching brief pursuant to paragraph 152(6).

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

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

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

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

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

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

#### Commencement Information

**I153** Sch. 9 para. 153 in force at 1.9.2020, see [art. 1](#)

#### Indemnity **E+W**

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

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

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

**Changes to legislation:** There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any specified works carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any specified works yet to be executed and not falling within this sub-section (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 154.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) Cadent must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies and if reasonably requested to do so by the undertaker Cadent must provide an explanation of how the claim has been minimised.

(6) The undertaker must not commence any maintenance activity (and must not permit the commencement of such maintenance activity) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker or its contractor has procured acceptable insurance (and provided evidence to Cadent that it shall maintain such acceptable insurance for the maintenance period) and Cadent has confirmed the same in writing to the undertaker.

(7) In the event that the undertaker fails to comply with sub-paragraph (6), nothing in this Part of this Schedule shall prevent Cadent from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

(8) The undertaker is not required to comply with sub-paragraph (6) where it needs to carry out emergency works as defined in the 1991 Act.

**Commencement Information**

**I154** Sch. 9 para. 154 in force at 1.9.2020, see [art. 1](#)

**Enactments and agreements** **E+W**

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

**Commencement Information**

**I155** Sch. 9 para. 155 in force at 1.9.2020, see [art. 1](#)

**Co-operation** **E+W**

**156.**—(1) Where in consequence of the specified works, the undertaker or Cadent requires the removal of apparatus under paragraph 150(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 152, the undertaker shall use its best endeavours to co-



ordinate the execution of the works in the interests of safety and the efficient and economic execution of the specified works and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other [<sup>F26</sup>information submitted by the undertaker or the taking of action by the undertaker], it must not be unreasonably withheld or delayed.

#### Textual Amendments

**F26** Words in Sch. 9 para. 156(2) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, Sch.

#### Commencement Information

**I156** Sch. 9 para. 156 in force at 1.9.2020, see [art. 1](#)

#### Access **E+W**

**157.** If in consequence of the agreement reached in accordance with paragraph 149(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

#### Commencement Information

**I157** Sch. 9 para. 157 in force at 1.9.2020, see [art. 1](#)

#### Arbitration **E+W**

**158.** Any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 42 (arbitration).

#### Commencement Information

**I158** Sch. 9 para. 158 in force at 1.9.2020, see [art. 1](#)

#### Notices **E+W**

**159.** The plans submitted to Cadent by the undertaker pursuant to paragraph 152(1) must be sent to Cadent Gas Limited Plant Protection at [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

#### Commencement Information

**I159** Sch. 9 para. 159 in force at 1.9.2020, see [art. 1](#)

## PART 12 **E+W**

### FOR THE PROTECTION OF HIGHWAYS ENGLAND COMPANY LIMITED

#### Application **E+W**

**160.** For the protection of Highways England Company Limited (Company No. 04346363) as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Highways England.

#### Commencement Information

**1160** Sch. 9 para. 160 in force at 1.9.2020, see [art. 1](#)

#### Interpretation **E+W**

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

“the contractor” means any contractor or sub-contractor appointed by the undertaker to construct the HE works;

“the detailed design information” means details of the following where applicable to the HE works—

- (a) site clearance details;
- (b) boundary and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting and supporting drainage calculations;
- (e) earthworks including supporting geotechnical assessments and any required strengthened earthworks appraisal form certification;
- (f) kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets) and supporting lighting calculations;
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures and any required structural approval in principle;
- (l) landscaping;
- (m) proposed departures from DMRB requirements;
- (n) utilities diversions;
- (o) topographical survey;
- (p) site waste management plan;
- (q) maintenance and repair strategy in accordance with Designing for Maintenance Interim Advice Note 69/15 or any replacement or modification of it;
- (r) asbestos survey;
- (s) regime of core testing and sampling of existing trunk road pavement construction;
- (t) site investigation survey;
- (u) health and safety information; and

**Changes to legislation:** There are currently no known outstanding effects for the *The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9*. (See end of Document for details)

(v) other such information used to inform the detailed design of the HE works that may be required by Highways England;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“the estimated costs” means the estimated costs in respect of any HE works agreed pursuant to paragraph 164 of this Part of this Schedule;

“the Existing Gas Pipeline” means the existing gas pipeline the location of which is shown shaded blue within the Order Land but outside the Order Limits as shown on <sup>F27</sup>... the Land Plans;

“the HE works” means any works carried out by the undertaker on the strategic road network <sup>F27</sup>... to maintain, alter, inspect, repair, renew, replace, decommission or remove in whole or in part the Existing Gas Pipeline;

“Highways England” means the Highways England Company Limited with company number 04346363 and whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ;

“the nominated persons” means the undertaker's representatives or the contractor's representatives on site during construction of the HE works, as notified to Highways England from time to time;

“the programme of works” means a document setting out the sequence and timetabling of the HE works; and

“utilities” means any pipes, wires, cables or other equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act.

#### Textual Amendments

**F27** Word in [Sch. 9 para. 161](#) omitted (17.5.2021) by virtue of [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), [art. 1](#), [Sch.](#)

#### Commencement Information

**I161** [Sch. 9 para. 161](#) in force at 1.9.2020, see [art. 1](#)

### Prior approvals **E+W**

**162.**—(1) The HE works must not commence until—

- (a) the detailed design of the HE works comprising of the following details has been submitted to and approved by Highways England—
  - (i) the detailed design information;
  - (ii) the programme of works;
  - (iii) details of proposed road space bookings;
  - (iv) a scheme of traffic management; and
  - (v) the identity of the contractor and nominated persons;
- (b) all necessary temporary traffic regulation measures have been made by the undertaker under [article 11\(1\)](#) or [14\(3\)](#), or all necessary temporary traffic regulation orders have been made by Highways England;
- (c) at least 28 days' notice of the commencement date of the HE works has been given to Highways England in writing, unless otherwise agreed by Highways England.

(2) Highways England must use its best endeavours to notify the undertaker of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 42 days of the information required by sub-paragraphs (1)(a)(i) to (1)(a)(v) being received by Highways England. Highways England must give reasons for any disapproval and shall not unreasonably delay its approval to the undertaker.

(3) In the event of any disapproval, the undertaker may re-submit the information required by sub-paragraphs (1)(a)(i) to (1)(a)(v) with modifications and Highways England must use its best endeavours to notify the undertaker of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 42 days of the revised detailed design information being received by Highways England. Highways England must give reasons for any further disapproval and must not unreasonably withhold or delay consent.

(4) The documents and programmes approved under sub-paragraphs (1) and (2) may be subsequently amended by agreement between the undertaker and Highways England from time to time, both parties acting reasonably and without delay.

(5) Within 28 days of receipt of a written request by the undertaker and in any event prior to the commencement of the HE works, Highways England must inform the undertaker of the identity of the person who will act as the point of contact on behalf of Highways England for consideration of the information required under sub-paragraph (1).

#### Commencement Information

**1162** Sch. 9 para. 162 in force at 1.9.2020, see [art. 1](#)

#### Construction of the HE works **E+W**

**163.**—(1) The HE works must be constructed to the satisfaction of Highways England acting reasonably and in accordance (where relevant) with—

- (a) the information approved under paragraph 162(1) or as subsequently varied by agreement between the undertaker and Highways England;
- (b) the DMRB and the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works) together with all other relevant standards as required by Highways England (to include all relevant interim advice notes, the Traffic Signs Manual 2008 and any amendment to or replacement of such standards for the time being in force), save to the extent that exceptions to those standards apply which have been approved by Highways England under paragraph 162(1) in respect of the HE works;
- (c) the Traffic Signs Regulations and General Directions 2016 or any amendment to or replacement of them; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any amendment to or replacement of them.

(2) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must have been previously notified to the undertaker and the contractor by Highways England) to gain access to the HE works for the purposes of inspection and supervision of the HE works.

(3) The undertaker must permit and must require the contractor to act upon any reasonable request made by Highways England in relation to the construction of the HE works as soon as reasonably practicable provided such a request is not inconsistent with and does not fall outside the contractor's obligations under its contract with the undertaker or the undertaker's obligations under this Order.

(4) If any part of the HE works is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Highways England 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.

(5) If within 28 days of the date on which a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to take the steps required by that notice. Highways England may carry out works to reinstate the highway and other land and premises of Highways England, and Highways England may recover from the undertaker any expenditure reasonably incurred by it in so doing.

(6) If during construction of the HE works the undertaker causes any damage to the strategic road network then Highways England may by notice in writing require the undertaker, at the undertaker's own expense, to remedy the damage.

(7) If within 28 days of the date on which a notice under sub-paragraph (6) is served on the undertaker, the undertaker has failed to take steps to comply with the notice. Highways England may carry out the steps required of the undertaker and may recover from the undertaker any expenditure reasonably incurred by Highways England in so doing.

(8) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking such action as it reasonably believes to be necessary as a result of the construction of the HE works without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

(9) In constructing the HE works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the reasonable satisfaction of Highways England.

#### Commencement Information

**I163** Sch. 9 para. 163 in force at 1.9.2020, see [art. 1](#)

#### Payments **E+W**

**164.**—(1) The undertaker must fund the full cost of the HE works and any incidental and amended works approved under this Part of this Schedule and must also pay to Highways England in respect of the HE works a sum equal to the whole of any costs and expenses which Highways England reasonably incurs (including costs and expenses for using internal or external staff) in relation to—

- (a) the checking and approval of the information required by paragraph 162(1)(a);
- (b) the supervision of the HE works;
- (c) all legal and administrative costs in relation to sub-paragraphs (a) and (b) above;
- (d) any costs incurred by Highways England in undertaking any necessary statutory procedure required as a result of construction of the HE works, and in preparing and bringing into force any traffic regulation order necessary to construct or implement the HE works, provided that this paragraph will not apply to the making of any orders which duplicate traffic regulation measures contained in, or which may be made by the undertaker under, this Order; and
- (e) any value added tax which is payable by Highways England in respect of the costs incurred pursuant to <sup>F28</sup>paragraphs (a) to (d) which Highways England cannot otherwise recover from HM Revenue and Customs,

sub-paragraphs (a) to (e) together comprising “the estimated costs”.

**Changes to legislation:** There are currently no known outstanding effects for the *The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9*. (See end of Document for details)

(2) The undertaker and Highways England must, acting reasonably, agree a schedule of the estimated costs prior to the commencement of the HE works and once that schedule is agreed the undertaker must pay to Highways England the estimated costs in line with the agreed schedule.

(3) Highways England is not entitled to costs or expenses incurred under any limb of sub-paragraph (1) if those costs or expenses are included as part of the estimated costs under any other limb of that sub-paragraph.

#### Textual Amendments

**F28** Words in [Sch. 9 para. 164\(1\)\(e\)](#) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

#### Commencement Information

**I164** Sch. 9 para. 164 in force at 1.9.2020, see art. 1

### Indemnity **E+W**

**165.**—(1) Subject to sub-paragraphs (2) and (3) the undertaker must in relation to the construction of the HE works indemnify Highways England from and against all costs, expenses, damages, losses and liabilities arising from any claim, demand, action or proceedings resulting from damage caused by the construction of the HE works.

(2) Sub-paragraph (1) does not apply if the costs, expenses, damages, losses and liabilities were caused by or arise out of the act, neglect or default of Highways England or its officers, servants, agents, contractors or any person or body for whom it is responsible.

(3) In no circumstances is the undertaker liable to Highways England under this Part of this Schedule for any indirect or consequential loss or loss of profits.

(4) If any person makes a claim or notifies an intention to make a claim against Highways England which may reasonably be considered likely to give rise to a liability under this paragraph then Highways England must—

- (a) as soon as reasonably practicable give the undertaker reasonable notice of any such third party claim or demand, specifying the nature of the indemnity liability in reasonable detail;
- (b) not make any admission of liability, agreement or compromise in relation to the indemnity liability without first consulting the undertaker and considering their representations.

(5) The undertaker acknowledges that Highways England may receive statutory compensation claims and that Highways England may not be able to comply with sub-paragraph (4) above in respect of such claims.

(6) Where Highways England considers that sub-paragraph (5) applies to any claim or demand it must give notice of that view as part of the relevant notice provided pursuant to sub-paragraph (4) (a) above.

(7) Highways England must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph applies where it is within Highways England's reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of Highways England's control. If reasonably requested to do so by the undertaker, Highways England must provide an explanation of how any claim has been mitigated or minimised or where mitigation or minimisation is not possible an explanation as to why.

**Commencement Information**

**I165** Sch. 9 para. 165 in force at 1.9.2020, see [art. 1](#)

**Arbitration** **E+W**

**166.** Any difference or dispute arising between the undertaker and Highways England under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Highways England, be determined by arbitration in accordance with article 42 (arbitration).

**Commencement Information**

**I166** Sch. 9 para. 166 in force at 1.9.2020, see [art. 1](#)

**Notices** **E+W**

**167.** A notice or other document required to be served on Highways England under this Part of the Schedule must be served by post to Antony Firth, Head of Planning and Development, Operations, Yorkshire and the North East Region, Highways England, Lateral, 8 City Walk, Leeds, LS11 9AT or such other postal address which Highways England may from time to time notify to the undertaker.

**Commencement Information**

**I167** Sch. 9 para. 167 in force at 1.9.2020, see [art. 1](#)

**PART 13** **E+W**

**FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC**

**168.** For the protection of Northern Powergrid the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

**Commencement Information**

**I168** Sch. 9 para. 168 in force at 1.9.2020, see [art. 1](#)

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

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

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by Northern Powergrid;

“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

“Northern Powergrid” means Northern Powergrid (Yorkshire) Plc (company number 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF.

**Commencement Information**

**I169** Sch. 9 para. 169 in force at 1.9.2020, see [art. 1](#)

**170.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

**Commencement Information**

**I170** Sch. 9 para. 170 in force at 1.9.2020, see [art. 1](#)

**171.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets ), Northern Powergrid is at entitled at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

**Commencement Information**

**I171** Sch. 9 para. 171 in force at 1.9.2020, see [art. 1](#)

**172.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

**Commencement Information**

**I172** Sch. 9 para. 172 in force at 1.9.2020, see [art. 1](#)

**173.—(1)** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided by virtue of an easement for a tenure no less than <sup>F29</sup>exists in relation to the apparatus being relocated] or diverted, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (7).

(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, the undertaker must give Northern Powergrid 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 Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed 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, Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable 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 must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 185.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 185, and after the grant to Northern Powergrid 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 Northern Powergrid that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by Northern Powergrid, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Northern Powergrid.

(7) Nothing in sub-paragraph (6) authorises the undertaker to place, install, bed, pack, remove, connect or disconnect any apparatus, or any fill around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

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#### Textual Amendments

**F29** Words in [Sch. 9 para. 173\(1\)](#) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

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#### Commencement Information

**I173** [Sch. 9 para. 173](#) in force at 1.9.2020, see art. 1

**174.—(1)** Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid 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 Northern Powergrid or in default of agreement settled by arbitration in accordance with paragraph 185.

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

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#### Commencement Information

**I174** [Sch. 9 para. 174](#) in force at 1.9.2020, see [art. 1](#)

**Changes to legislation:** There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)

**175.—**(1) Not less than 90 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under 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 173(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

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

(3) Any requirements made by Northern Powergrid 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 Northern Powergrid 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 168 to 174 apply as if the removal of the apparatus had been required by the undertaker under paragraph 173(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 Northern Powergrid notice as soon as is reasonably practicable and subsequently a plan, section and description of those works as soon as reasonably practicable and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**Commencement Information**

**I175** Sch. 9 para. 175 in force at 1.9.2020, see [art. 1](#)

**176.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid the reasonable expenses incurred by Northern Powergrid—

- (a) 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 173(2); and
- (b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all,

provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 173(2) having first decommissioned such apparatus.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal and, if the apparatus removed under the provisions of this Part of this Schedule has no value, no sum is to be deducted from the amount payable under sub-paragraph (1).

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 185 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 Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type capacity or dimensions of apparatus or to lay it at the same depth as the existing apparatus being replaced in which case the full costs are to 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 where such extension is required in consequence of the execution of any such works as are referred to in paragraph 173(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Northern Powergrid in respect of works by virtue of sub-paragraph (1) is to be reduced by the amount which represents that benefit 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 Northern Powergrid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course<sup>F30</sup>....

#### Textual Amendments

**F30** Sch. 9 para. 176(5) comma omitted (17.5.2021) by virtue of [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, Sch.

#### Commencement Information

**I176** Sch. 9 para. 176 in force at 1.9.2020, see art. 1

**177.**—(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 173(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 Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, the undertaker must—

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

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

**Changes to legislation:** There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)

(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 Northern Powergrid, its officers, servants, contractors or agents.

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

**Commencement Information**

**I177** Sch. 9 para. 177 in force at 1.9.2020, see [art. 1](#)

**178.** Nothing in this Part of this Schedule affects any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**Commencement Information**

**I178** Sch. 9 para. 178 in force at 1.9.2020, see [art. 1](#)

**179.**—(1) Without prejudice to the generality of this Part of this Schedule, Northern Powergrid must from time to time submit to the undertaker estimates of reasonable costs and expenses it expects to incur in relation to the implementation of any diversions or relocation of apparatus contemplated under this Part of this Schedule including without limitation—

- (a) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker under paragraph 176;
- (b) costs incurred in fulfilling its obligations in paragraph 173(3);
- (c) fees incurred in settling and completing and registering any documentation to secure rights for its diverted or relocated apparatus; and
- (d) costs and expenses of contractors required to undertake any works for which Northern Powergrid is responsible and of purchasing the necessary cabling and associated apparatus,

provided that Northern Powergrid must use reasonable endeavours to minimise to a proper and reasonable level any charges, costs, fees and expenses to the extent that they are incurred.

**Commencement Information**

**I179** Sch. 9 para. 179 in force at 1.9.2020, see [art. 1](#)

**180.** Northern Powergrid and the undertaker must use their reasonable endeavours to agree the amount of any estimates submitted by Northern Powergrid under paragraph 179 within 15 working days following receipt of such estimates by the undertaker. The undertaker must confirm whether it agrees to the amount of such estimates in writing and must not unreasonably withhold or delay such agreement. If the parties are unable to agree the amount of an estimate, the dispute must be dealt with in accordance with paragraph 185.

**Commencement Information**

**I180** Sch. 9 para. 180 in force at 1.9.2020, see [art. 1](#)

**181.** Work in relation to which an estimate is submitted must not be commenced by Northern Powergrid until that estimate is agreed with the undertaker in writing and a purchase order up to the value of the approved estimate has been issued by the undertaker to Northern Powergrid and an easement for the routes of the apparatus has been granted to Northern Powergrid under paragraph 173(1) for the benefit of its statutory undertaking.

**Commencement Information**

**I181** Sch. 9 para. 181 in force at 1.9.2020, see [art. 1](#)

**182.** If Northern Powergrid at any time becomes aware that an estimate agreed is likely to be exceeded, it must forthwith notify the undertaker and must submit a revised estimate of the relevant costs and expenses to the undertaker for agreement.

**Commencement Information**

**I182** Sch. 9 para. 182 in force at 1.9.2020, see [art. 1](#)

**183.** Northern Powergrid may from time to time, and at least monthly, from the date of this Order issue to the undertaker invoices for costs and expenses incurred up to the date of the relevant invoice, for the amount of the relevant estimate agreed. Invoices issued to the undertaker for payment must—

- (a) specify the approved purchase order number; and
- (b) be supported by timesheets and narratives that demonstrate that the work invoiced has been completed in accordance with the agreed estimate.

**Commencement Information**

**I183** Sch. 9 para. 183 in force at 1.9.2020, see [art. 1](#)

**184.** The undertaker is not responsible for meeting costs or expenses in excess of an agreed estimate, other than where agreed under paragraph 181 or determined in accordance with paragraph 185.

**Commencement Information**

**I184** Sch. 9 para. 184 in force at 1.9.2020, see [art. 1](#)

**185.** Any difference under the provisions of this Part of this Schedule, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by an independent electrical engineer by or on behalf of the President for the time being of the Institute of Engineering and Technology.

**Commencement Information**

**I185** Sch. 9 para. 185 in force at 1.9.2020, see [art. 1](#)

## PART 14 **E+W**

### FOR THE PROTECTION OF HORNSEA 1 LIMITED

**186.** For the protection of Hornsea 1 referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and Hornsea 1, have effect.

#### Interpretation

##### Commencement Information

**I186** Sch. 9 para. 186 in force at 1.9.2020, see [art. 1](#)

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

“Hornsea 1” means Hornsea 1 Limited (registered number 07640868) and in substitution therefor their successors to Hornsea 1 Limited's interests and/or the Hornsea 1 apparatus;

“Hornsea 1 apparatus” means any conduit cables ducts pipes or other apparatus or equipment belonging to or maintained by Hornsea 1 for the purposes of the transmission of electricity and includes any structure in which such apparatus is lodged and where such apparatus is or is to be maintained within plots 59, 60, 61, 62, 63, 64, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 90, 91, and 92;

“Hornsea 1 Limited's interests” means any interest or right held by Hornsea 1 or which Hornsea 1 has the right or power to obtain within plots 59, 60, 61, 62, 63, 64, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 90, 91, and 92;

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

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

“protected area” means the area within 20 metres in all directions of each point from the Hornsea 1 apparatus or Hornsea 1 interests; and

“works” means any future works undertaken by or on behalf of the undertaker to install, maintain, alter, inspect, repair, renew, decommission or remove in whole or in part land or apparatus in the protected area.

##### Commencement Information

**I187** Sch. 9 para. 187 in force at 1.9.2020, see [art. 1](#)

#### Acquisition of land **E+W**

**188.** Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or cables of Hornsea 1 other than by agreement, such agreement not to be unreasonably withheld.

**Commencement Information**

**I188** Sch. 9 para. 188 in force at 1.9.2020, see [art. 1](#)

**Protection of Hornsea 1 from works** **E+W**

**189.**—(1) Before any works are commenced the undertaker must submit to Hornsea 1 plans and sections of the proposed works and such further particulars as Hornsea 1 may, within 14 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

(2) The undertaker must not commence any works to which sub-paragraph (1) applies until Hornsea 1 has given written approval of the plan so submitted.

(3) Any approval of Hornsea 1 required under sub-paragraph (2)—

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

**Commencement Information**

**I189** Sch. 9 para. 189 in force at 1.9.2020, see [art. 1](#)

**Costs** **E+W**

**190.**—(1) The undertaker must repay to Hornsea 1 all reasonable fees, costs, charges and expenses properly and reasonably incurred by them in relation to these protective provisions, in respect of—

- (a) the consideration and approval of the works under paragraph 189; and
- (b) the attendance of a representative of Hornsea 1 during the undertaking of any works in the protected area.

(2) Hornsea 1 must provide the undertaker with such estimates of and evidence in relation to any fees, costs, charges or expenses to which sub-paragraph (1) does or may apply as the undertaker may reasonably request.

(3) The undertaker will indemnify and keep Hornsea 1 indemnified against all reasonable costs, charges, damages, expenses, loss, demands, proceedings, claims or penalty which may be reasonably incurred by Hornsea 1—

- (a) by reason of the works or the failure of them; and/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 the works.

(4) Hornsea 1 must give the undertaker reasonable notice of any claim or demand under sub-paragraph (3) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

**Commencement Information**

**I190** Sch. 9 para. 190 in force at 1.9.2020, see [art. 1](#)

## Access **E+W**

**191.** If in consequence of the powers granted under this Order the access to any Hornsea 1 apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Hornsea 1 to maintain or use the apparatus no less effectively than was possible before such obstruction.

### Commencement Information

**I191** Sch. 9 para. 191 in force at 1.9.2020, see [art. 1](#)

## Expert determination **E+W**

**192.**—(1) Except as provided in sub-paragraph (7), article 42 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
- (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;
- (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;



**Changes to legislation:** There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)

- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (i) the constructability notes; and
- (j) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under [<sup>F31</sup>article 42 (arbitration)].

#### Textual Amendments

**F31** Words in [Sch. 9 para. 192\(7\)](#) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), [art. 1](#), [Sch.](#)

#### Commencement Information

**I192** [Sch. 9 para. 192](#) in force at 1.9.2020, see [art. 1](#)

## PART 15 **E+W**

### FOR THE PROTECTION OF HORNSEA 2 COMPANIES

#### Application **E+W**

**193.** For the protection of Hornsea 2 referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and Hornsea 2, have effect.

#### Commencement Information

**I193** [Sch. 9 para. 193](#) in force at 1.9.2020, see [art. 1](#)

#### Interpretation **E+W**

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

“Hornsea 2” means Optimus Wind Limited (registered number 07883284), Breesea Limited (registered number 07883217), Sonningmay Wind Limited (registered number 10722635) and Soundmark Wind Limited (registered number 10721881) and in substitution therefor their successors to Hornsea 2's interests and/or the Hornsea 2 apparatus;

“Hornsea 2 apparatus” means any conduit cables ducts pipes or other apparatus or equipment belonging to or maintained by Hornsea 2 for the purposes of the transmission of electricity and includes any structure in which such apparatus is lodged and where such apparatus is or is to be maintained within plots 59, 60, 61, 62, 63, 64, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 90, 91, and 92;

“Hornsea 2's interests” means any interest or right held by Hornsea 2 or which Hornsea 2 has the right or power to obtain within plots 59, 60, 61, 62, 63, 64, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 90, 91, and 92;

**Changes to legislation:** There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9. (See end of Document for details)

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

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

“protected area” means the area within 20 metres in all directions of each point from the Hornsea 2 apparatus or Hornsea 2 interests; and

“works” means any future works undertaken by or on behalf of the undertaker to install, maintain, alter, inspect, repair, renew, decommission or remove in whole or in part land or apparatus in the protected area.

#### Commencement Information

**I194** Sch. 9 para. 194 in force at 1.9.2020, see [art. 1](#)

#### Acquisition of land **E+W**

**195.** Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or cables of Hornsea 2 other than by agreement, such agreement not to be unreasonably withheld.

#### Commencement Information

**I195** Sch. 9 para. 195 in force at 1.9.2020, see [art. 1](#)

#### Protection of Hornsea 2 from works **E+W**

**196.**—(1) Before any works are commenced the undertaker must submit to Hornsea 2 plans and sections of the proposed works and such further particulars as Hornsea 2 may, within 14 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

(2) The undertaker must not commence any works to which sub-paragraph (1) applies until Hornsea 2 has given written approval of the plan so submitted.

(3) Any approval of Hornsea 2 required under sub-paragraph (2)—

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

#### Commencement Information

**I196** Sch. 9 para. 196 in force at 1.9.2020, see [art. 1](#)

#### Costs **E+W**

**197.**—(1) The undertaker must repay to Hornsea 2 all reasonable fees, costs, charges and expenses properly and reasonably incurred by them in relation to these protective provisions, in respect of—

- (a) the consideration and approval of the works under paragraph 196; and

- (b) the attendance of a representative of Hornsea 2 during the undertaking of any works in the protected area.
- (2) Hornsea 2 must provide the undertaker with such estimates of and evidence in relation to any fees, costs, charges or expenses to which sub-paragraph (1) does or may apply as the undertaker may reasonably request.
- (3) The undertaker will indemnify and keep Hornsea 2 indemnified against all reasonable costs, charges, damages, expenses, loss, demands, proceedings, claims or penalty which may be reasonably incurred by Hornsea 2—
  - (a) by reason of the works or the failure of them; and/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 the works.
- (4) Hornsea 2 must give the undertaker reasonable notice of any claim or demand under sub-paragraph (3) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

**Commencement Information**

**I197** Sch. 9 para. 197 in force at 1.9.2020, see [art. 1](#)

**Access** **E+W**

**198.** If in consequence of the powers granted under this Order the access to any Hornsea 2 apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Hornsea 2 to maintain or use the apparatus no less effectively than was possible before such obstruction.

**Commencement Information**

**I198** Sch. 9 para. 198 in force at 1.9.2020, see [art. 1](#)

**Expert determination** **E+W**

**199.—(1)** Except as provided in sub-paragraph (7), article 42 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

**Changes to legislation:** There are currently no known outstanding effects for the *The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9*. (See end of Document for details)

- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
  - (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
  - (d) give reasons for the decision.
- (6) The expert must consider where relevant—
- (a) the development outcome sought by the undertaker;
  - (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
  - (c) the nature of the power sought to be exercised by the undertaker;
  - (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
  - (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;
  - (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
  - (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
  - (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
  - (i) the constructability notes; and
  - (j) any other important and relevant consideration.
- (7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under [<sup>F32</sup>article 42 (arbitration)].

.....  
**Textual Amendments**

**F32** Words in *Sch. 9 para. 199(7)* substituted (17.5.2021) by *The Immingham Open Cycle Gas Turbine (Correction) Order 2021 (S.I. 2021/581)*, art. 1, *Sch.*

.....  
**Commencement Information**

**I199** *Sch. 9 para. 199* in force at 1.9.2020, see *art. 1*

**Changes to legislation:**

There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, SCHEDULE 9.