

# SCHEDULES

## SCHEDULE 16

### PROVISIONS FOR PROTECTION OF SPECIFIED UNDERTAKERS

#### PART 1

#### ELECTRICITY AND GAS UNDERTAKERS

##### SECTION 1

##### *National Grid electricity and gas*

#### **Application**

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

#### **Interpretation**

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory or licensed 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 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;

“connection work” means the actual placing, erection, installation, bedding, packing, removal, connection or disconnection of any apparatus or, where the apparatus is laid in a trench, execute any filling around the apparatus within 500 millimetres (measured in any direction) of the apparatus where the apparatus is operating or only capable of operating at below 7 bar pressure or within 3000 millimetres of the apparatus where the apparatus is operating or is capable of operating at or in excess of 7 bar pressure

(c) “functions” includes powers and duties;

(d) “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;

(e) “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

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- (f) “plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;  
“promoter” means the undertaker as defined in article 2 of this Order;  
“undertaker” means—
- (g) National Grid Electricity Transmission plc as a licence holder within the meaning of Part 1 of the Electricity Act 1989; and
- (h) National Grid Gas plc as a gas transporter within the meaning of Part 1 of the Gas Act 1986.

3. Except for paragraphs 4 (Apparatus of undertakers in stopped up streets), 10 (Retained apparatus— protection of gas undertakers) and 11 (Retained apparatus— protection of electricity undertakers), 12 (Expenses) and 13 (Indemnity) this Schedule does not apply to apparatus in respect of which the relations between the promoter and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

#### **Apparatus of Undertakers in stopped up streets**

4.—(1) Where any street is stopped up under article 13 (stopping up of streets), any undertaker whose apparatus is in the street or accessed via that street shall be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to the undertaker legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (*temporary stopping up of streets*), an undertaker shall be at liberty at all times to take all necessary access across any such stopped up highway and or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

#### **Protective works to buildings**

5.—(1) The promoter, in the case of the powers conferred by article 20 (protective work to buildings and structures), shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the undertaker 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 any undertaker or any interruption in the supply of electricity, gas or water, as the case may be, by the undertaker is caused, the promoter shall—

- (a) repay the cost reasonably incurred by the undertaker in making good such damage or restoring the supply; and
- (b) indemnify the undertaker against all losses 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 shall impose any liability on the promoter with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of an undertaker or its officers servants contractors workmen or other agents; and the undertaker shall give to the promoter reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior written consent of the promoter which shall not be unreasonably withheld or delayed.

## **Acquisition of land**

6. 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 promoter shall not acquire any apparatus or override any easement or other interest of the undertaker otherwise than by agreement.

## **Removal of apparatus**

7.—(1) If, in the exercise of the agreement reached in accordance with paragraph (6) or in any other authorised manner, the promoter acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this part of this Schedule and any right of an undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the undertaker in question in accordance with sub-paragraph (2) to (8) 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 promoter requires the removal of any apparatus placed in that land, it shall give to the undertaker in question 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the promoter shall, subject to sub-paragraph (3), afford to the undertaker to their satisfaction (taking into account paragraph 9(1) below) the necessary facilities and rights for

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

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

(4) Any alternative apparatus to be constructed in land of the promoter under this part of this Schedule shall be constructed in such manner and in such line or situation and in accordance with such programme as may be agreed between the undertaker in question and the promoter.

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

(6) If the promoter gives notice in writing to the undertaker that it desires to carry out any part of any work to which this paragraph applies, such work, instead of being carried out by the undertaker, may be carried out by the promoter with the prior written consent of the undertaker (which shall not be unreasonably withheld or delayed and shall be subject to any such conditions as are reasonable and proper to protect the apparatus) in accordance with the plans to which the undertaker has confirmed (or is deemed to have confirmed) in accordance with paragraph 8, with all reasonable despatch under the superintendence (if given) and to the reasonable satisfaction of the undertaker.

(7) The undertaker shall, within 14 days after the undertaker has confirmed (or is deemed to have confirmed) that it has no objection to the plans for the necessary work in accordance with paragraph 8 and after the grant to or obtaining by the undertaker of any such facilities and rights as referred to

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in sub-paragraph (2) or (3), supply the promoter with the name of its approved contractor and the promoter shall be responsible for the engagement of the contractor on such terms and conditions as the promoter thinks fit.

(8) If the undertaker does not provide the name of its approved contractor within the period required by sub-paragraph (7), the promoter shall be entitled to carry out the necessary work using such contractor as it thinks fit, being a contractor who appears to the promoter, following reasonable enquiry of the undertaker, to be competent and suitably qualified to carry out that work.

(9) In carrying out any work under sub-paragraph (6) the promoter shall comply with all statutory obligations which would have been applicable had the works been carried out by the undertaker

(10) Nothing in sub-paragraph (6) shall authorise the promoter to carry out any connection work

### **Approval of plans for Alternative Apparatus**

**8.** Not less than 56 days before the date on which the promoter intends to commence, or requires the undertaker to commence, the construction of any alternative apparatus, the promoter shall submit to the undertaker for approval plans of the alternative apparatus detailing:

- (a) the exact position of the alternative apparatus;
- (b) the level at which the alternative apparatus is proposed to be constructed;
- (c) the manner of construction of the alternative apparatus; and
- (d) the indicative cost of and programme for the construction of the alternative apparatus

(2) Within 42 days (or such longer period as the parties may agree) following receipt of the plans under sub-paragraph (1), the undertaker shall respond to the promoter either:

- (a) confirming that it has no objection to the plans; or
- (b) specifying (with reasons) its objections to the plans and (if the undertaker considers it appropriate to do so) suggesting any changes which in its opinion are needed in order to remove the objections in which event the promoter shall revise and resubmit the plans and the provision of this paragraph 8 shall apply to the plans as so revised; or
- (c) specifying the further information which it requires in order to assess the plans.

(3) If the undertaker fails to respond to the promoter within 42 days (or such longer period as the parties may agree) and provided that paragraph 10(5) has been complied with it shall be deemed to have confirmed that it has no objection to the plans.

(4) Any dispute between the parties in relation to this paragraph (8) shall be resolved in accordance with paragraph 18

(5) For the avoidance of doubt, nothing in this paragraph 8 shall be construed as permitting the promoter to carry out work in connection with the construction of alternative apparatus or the removal of apparatus without first obtaining the undertaker's prior written consent in accordance with paragraph 7(6).

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

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

(2) If the facilities and rights to be afforded by the promoter and agreed with the undertaker under 8(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the 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 in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the promoter to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) The promoter and the undertaker agree that where there is any inconsistency or duplication between the provisions set out in 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 easements rights agreements and licences granted used enjoyed or exercised by the undertaker as of right or otherwise in relation to the apparatus then the provisions in this Schedule shall prevail.

### **Retained apparatus: protection Gas Undertakers**

**10.**—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the promoter under paragraph 7(2) or otherwise, the promoter shall submit to the undertaker in question a plan.

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

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

(3) Within 42 days (or such longer period as the undertaker and the promoter may agree) following receipt of the plans under sub-paragraph (1) the undertaker shall respond to the promoter either:

- (a) confirming that it has no objection to the plans together with its reasonable requirements for the removal, alteration, or otherwise for the protection, of any apparatus, or for securing access thereto; or
- (b) specifying (with reasons) its objections to the plans and (if the undertaker considers it appropriate to do so) suggesting any changes which in its opinion are needed in order to remove the objections in which event the promoter shall revise and resubmit the plans and the provision of this sub-paragraph (3) shall apply to the plans as so revised; or
- (c) specifying the further information which it requires in order to assess the plans.

(4) If the undertaker fails to respond to the promoter within 42 days (or such longer period as the undertaker and the promoter may agree) and provided that sub-paragraph 5 has been complied with it shall be deemed to have confirmed that it has no objection to the plans.

(5) When submitting the plans to the undertaker pursuant to paragraph 8 or sub-paragraph (1) or paragraph 11(1) the promoter shall send the plans to the undertaker (in hard copy only) by recorded

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post to National Grid Plant Protection, Brick Kiln Street, Hinckley, Leicestershire LE10 ONA and the registered office of the undertaker (or such other address as the undertaker may notify the promoter in writing from time to time). In the event that the promoter has not received a response from the undertaker in accordance with paragraph 8 or sub-paragraph (3) or paragraph 11(3) within 21 days of submission of the plans under paragraph 8 or sub-paragraph (1) or paragraph 11(1), the promoter shall issue a written reminder to the undertaker by recorded post to both of the aforementioned addresses.

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (9), as amended from time to time by agreement between the promoter and the undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) or (7) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker shall be entitled to watch and inspect the execution of those works.

(7) Where undertakers require any protective works to be carried out either themselves or by the promoter (whether of a temporary or permanent nature) such protective works shall be carried out to the undertakers' satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part thereof) and the undertakers shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (9) (except in an emergency).

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

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

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

- (a) comply with sub-paragraph (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 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/SSW27" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) Any dispute between the parties in relation to this paragraph 10 shall be resolved in accordance with paragraph 18.

### **Retained apparatus: Protection: Electricity Undertakers**

**11.**—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the promoter under paragraph 7(2) or otherwise, the promoter shall submit to the undertaker in question a plan.

(2) In relation to works which will or may be situated on, over, under or within 8.1 metres measured in any direction of any apparatus, or involve embankment works within 8.1 metres of any apparatus, the plan to be submitted to the undertaker under sub-paragraph (1) shall be detailed including a material statement and describing—

- (a) the exact position of the works;
  - (b) the level at which these are proposed to be constructed or renewed;
  - (c) the manner of their construction or renewal including details of excavation, positioning of plant;
  - (d) the position of all apparatus; and
  - (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.
- (3) Within 42 days (or such longer period as the undertaker and the promoter may agree) following receipt of the plans under sub-paragraph (1) the undertaker shall respond to the promoter either:
- (a) confirming that it has no objection to the plans together with its reasonable requirements for the removal, alteration, or otherwise for the protection, of any apparatus, or for securing access thereto; or
  - (b) specifying (with reasons) its objections to the plans and (if the undertaker considers it appropriate to do so) suggesting any changes which in its opinion are needed in order to remove the objections in which event the promoter shall revise and resubmit the plans and the provision of this sub-paragraph (3) shall apply to the plans as so revised; or
  - (c) specifying the further information which it requires in order to assess the plans.
- (4) If the undertaker fails to respond to the promoter within 42 days (or such longer period as the undertaker and the promoter may agree) and provided that paragraph 10(5) has been complied with it shall be deemed to have confirmed that it has no objection to the plans. Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (7), as amended from time to time by agreement between the promoter and the undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) or (5) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker shall be entitled to watch and inspect the execution of those works.
- (5) Where undertakers require any protective works to be carried out either themselves or by the promoter (whether of a temporary or permanent nature) such protective works shall be carried out to the undertakers' satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part thereof) and the undertakers shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (7) (except in an emergency).
- (6) If an undertaker in accordance with sub-paragraph (3) or (5) and in consequence of the works proposed by the promoter, reasonably requires the removal of any apparatus and gives written notice to the promoter of that requirement, paragraphs 1 to 3 and 6 to 8 shall apply as if the removal of the apparatus had been required by the promoter under paragraph 7(2).
- (7) Nothing in this paragraph shall preclude the promoter from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.
- (8) The promoter shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it shall give to the undertaker in question notice as soon as is reasonably practicable and a plan of those works and shall—
- (a) comply with sub-paragraph (4) and (5) insofar as is reasonably practicable in the circumstances; and
  - (b) comply with sub-paragraph (9) at all times.

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(9) At all times when carrying out any works authorised under the Order 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”.

(10) Any dispute between the parties in relation to this paragraph 11 shall be resolved in accordance with paragraph 18.

## **Expenses**

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

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that the undertaker elects to use CPO powers to acquire any necessary rights under 7(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (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 promoter or in default of agreement settled by arbitration in accordance with article 63 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the promoter.

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

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

(6) In any case where work is carried out by the promoter pursuant to paragraph 7(6) and, if such work had been carried out by the undertaker, the repayment made to undertaker under paragraph 12 would fall to be reduced pursuant to paragraphs 12(1) to 12(4), the undertaker shall pay to the promoter such sum as represents the amount of that reduction

(7) The undertaker shall from time to time submit to the promoter estimates of the reasonable expenses it reasonably expects to incur in relation to the items set out at paragraph 12(1), for agreement by the promoter.

(8) The promoter and the undertaker will use all reasonable endeavours to agree the amount of any estimates submitted by the undertaker under sub-paragraph (7) within 21 days following receipt of such estimates by the promoter. The promoter shall confirm its agreement to the amount of such estimates in writing and shall not unreasonably withhold or delay such agreement. If the promoter and the undertaker are unable to agree the amount of an estimate, it shall be dealt with in accordance with paragraph 18.

(9) Work in relation to which an estimate is submitted under sub-paragraph (7) shall not be commenced until the estimate is agreed under sub-paragraph (8) (unless this requirement is waived by the promoter in writing) and a purchase order number up to the value of the approved estimate has been issued by the promoter to the undertaker. The promoter shall issue the purchase order number within 21 days of the estimate being agreed under sub-paragraph (8).

(10) In the event that the undertaker requires funds to be provided by the promoter in advance of carrying out any works to relocate apparatus in accordance with paragraph 7, the undertaker shall be entitled to submit an invoice to the promoter for the anticipated costs and expenses and the provisions of sub-paragraph (12) shall apply. If the actual costs and expenses incurred by the undertaker in connection with such works are less than the anticipated costs and expenses paid to it by the promoter, then the undertaker shall pay to the promoter such sum as represents the amount of the difference between the anticipated costs and expenses paid by the promoter and the actual costs and expenses incurred by the undertaker.

(11) If the undertaker at any time becomes aware that an estimate agreed under sub-paragraph (8) has been or is likely to be exceeded, it shall forthwith notify the promoter and shall submit a revised estimate of the relevant costs and expenses to the promoter for agreement. The provisions of sub-paragraphs (8) to (10) (*mutatis mutandis*) shall apply to such revised estimate, except that the period referred to in sub-paragraph (8) shall be reduced to 7 days.

(12) The undertaker may from time to time, and at least twice a year (and in any event within 12 months of the costs and expenses being incurred) will, issue to the promoter invoices for costs and expenses incurred or, in the case of the costs referred to in sub-paragraph (10), anticipated to be incurred up to the date of the relevant invoice, up to the amount of the relevant estimate agreed under sub-paragraph (8) or (as the case may be) the revised estimate agreed under sub-paragraph (11). Invoices issued to the promoter for payment shall:

- (a) specify the approved purchase order number;

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- (b) be supported by timesheets and or narratives that demonstrate that the work invoiced has been completed in accordance with the agreed estimate; and
- (c) be paid within 28 days of their being received by the promoter's accounts department.

(13) The promoter shall not be responsible for meeting costs or expenses in excess of an estimate agreed under sub-paragraph (8) (and the undertaker shall not be obliged to incur any costs or expenses in excess of such agreed estimate) unless and until (and then only to the extent that) the promoter has agreed a revised estimate pursuant to sub-paragraph (11).

(14) Any amount properly due to the undertaker under this Schedule which is not paid by the date specified in sub-paragraph (12) thereafter carry interest at the rate of 2% above the Bank of England base rate from time to time for the period from such date up to and including the date on which payment (including accrued interest) is made.

### **Indemnity**

**13.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the promoter or in consequence of any act or default of the promoter (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the promoter under 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 those works) or property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, or the undertaker becomes liable to pay any amount to any third party, the promoter shall—

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

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

(3) Nothing in sub-paragraph (1) shall impose any liability on the promoter with respect to any damage or interruption to the extent that it is attributable to the neglect or default of an undertaker, its officers, servants, contractors or agents.

(4) An undertaker shall give the promoter reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the promoter and considering their representations.

### **Ground subsidence monitoring scheme in respect of Undertaker's apparatus**

**14.**—(1) No works of the type referred to in paragraphs 10(1) or 11(1) shall commence until a scheme for monitoring ground subsidence ("referred to in this paragraph as the monitoring scheme") which is capable of interfering with or risking damage to undertaker's apparatus has been submitted to and approved by the relevant undertaker, such approval not to be unreasonably withheld or delayed.

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

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, shall require the promoter to submit for undertaker's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

(3) The monitoring scheme required by sub paragraph (1) and (2) must be submitted within 56 days prior to the commencement of any works authorised by this Order or comprised within the authorised development. Any requirements of the undertaker will be notified within 28 days of receipt of the monitoring scheme. Thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with the undertaker.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") shall be submitted to the undertaker for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the undertaker save that the undertaker retains the right to carry out any further necessary protective works for the safeguarding of their apparatus and can recover any such costs in line with paragraph (12).

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority pursuant to Schedule 3 (requirements) the promoter may submit a revised monitoring scheme or mitigation scheme to the undertaker for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the undertaker.

### **Enactments and agreements**

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

### **Co-operation**

**16.** Where in consequence of the proposed construction of any of the authorised development, the promoter or an undertaker requires the removal of apparatus under paragraph 7(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraphs 10 or 11, the promoter 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 authorised development and taking into account the need to ensure the safe and efficient operation of the undertaker's undertaking and each undertaker shall use its best endeavours to co-operate with the promoter for that purpose.

### **Access**

**17.** If in consequence of the agreement reached in accordance with paragraph 6 or the powers granted under this Order the access to any apparatus is materially obstructed, the promoter shall provide such alternative means of access to such apparatus as will enable the undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## **Arbitration**

**18.** Any difference or dispute arising between the promoter and an undertaker under this Schedule shall, unless otherwise agreed in writing between the promoter and that undertaker, be determined by arbitration in accordance with article 63 (arbitration).