

## SCHEDULES

### SCHEDULE 9

Article 29

#### Protective provisions

### PART 1

#### For the protection of oil undertakers

1.—(1) For the protection of the statutory undertakers referred to in this Part of this Schedule the following provisions are to have effect, unless otherwise agreed in writing at any time between the undertaker and the statutory undertaker concerned.

(2) In this Part of this Schedule—

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

“apparatus” means in the case of Mainline Pipelines Limited, any pipeline, apparatus and works (as described in section 65 (3) of the Pipe-lines Act 1962(1)) belonging to or maintained by Mainline Pipelines Limited for the purposes of oil supply, and in each case 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;

“Mainline Pipelines Limited” means Mainline Pipelines Limited (company number 00995545) whose registered office is at 11 Old Jewry, London EC2R 8DU; and

“statutory undertaker” means Mainline Pipelines Limited and its successors in title and function, for the area of the authorised development, and in relation to any apparatus, means the undertaker for whom it belongs or by whom it is maintained.

#### Commencement Information

**11** (p00447) Sch. 9 Pt. 1 para. 1 in force at 28.10.2016, see [art. 1](#)

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

#### Commencement Information

**12** (p00447) Sch. 9 Pt. 1 para. 2 in force at 28.10.2016, see [art. 1](#)

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

(1) 1962 c.58.

**Commencement Information**

**I3** (p00447) Sch. 9 Pt. 1 para. 3 in force at 28.10.2016, see [art. 1](#)

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus is not to be removed under this Part of this Schedule and any right of a statutory undertaker to maintain that apparatus in that land is not to be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question written notice of that Requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph (2), the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 35, and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (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.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the statutory 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, that work, instead of being executed by the statutory undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(6) Nothing in sub-paragraph (5) is to authorise 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**

**I4** (p00447) Sch. 9 Pt. 1 para. 4 in force at 28.10.2016, see [art. 1](#)

5.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 4(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under that paragraph, the statutory undertaker must submit to the 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 statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker shall be entitled to watch and inspect the execution of those works.

(3) Any Requirements made by a statutory 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 statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that Requirement, sub-paragraphs (1) to (4) are to apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2).

(5) Nothing in this paragraph is to preclude 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 to be required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the statutory 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**

**I5** (p00447) Sch. 9 Pt. 1 para. 5 in force at 28.10.2016, see [art. 1](#)

**6.—(1)** Subject to the following provisions of this paragraph, the undertaker must repay to a statutory undertaker the proper and reasonable expenses reasonably incurred by that statutory undertaker in, or in connection with, the inspection, removal, alteration or protection of any 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.

(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 article 35 (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 statutory 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; and

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(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 statutory undertaker in respect of works by virtue of sub-paragraph (1) is to, 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 statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

**Commencement Information**

**I6** (p00447) Sch. 9 Pt. 1 para. 6 in force at 28.10.2016, see [art. 1](#)

## PART 2

### For the protection of National Grid Gas plc and National Grid Electricity Transmission Plc

#### Application

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

**Commencement Information**

**I7** (p00447) Sch. 9 Pt. 2 para. 1 in force at 28.10.2016, see [art. 1](#)

#### Interpretation

2. In this Part of this Schedule—

“apparatus” means—

- (a) in the case of an electricity protected person, electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by that protected person;
- (b) in the case of a gas protected person, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

“authorised works” has the same meaning as in Schedule 1 (authorised development) of this Order;

“commencement” has the same meaning as in paragraph 1 of Schedule 3 (Requirements) and commence shall be construed to have the same meaning;

“functions” includes powers and duties;

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

“ground monitoring scheme” means a scheme for monitoring ground subsidence appropriate for the nature of the works 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 the protected person'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 in land includes a reference to 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 of the protected person 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;

“protected person” means—

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

(d) a gas transporter within the meaning of Part 1 of the Gas Act 1986(2);

“specified works” means any of the authorised works that are works referred to in paragraph 8 of “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”.

**Commencement Information**

**18** (p00447) Sch. 9 Pt. 2 para. 2 in force at 28.10.2016, see [art. 1](#)

**3.** Except for paragraphs 5 and 6 (retained apparatus: protection), 7 (expenses) and 8 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

**Commencement Information**

**19** (p00447) Sch. 9 Pt. 2 para. 3 in force at 28.10.2016, see [art. 1](#)

**Commencement Information**

**18** (p00447) Sch. 9 Pt. 2 para. 2 in force at 28.10.2016, see [art. 1](#)

**19** (p00447) Sch. 9 Pt. 2 para. 3 in force at 28.10.2016, see [art. 1](#)

**Acquisition of land**

**4.** Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any land interest or apparatus or override any easement or other interest of the protected person otherwise than by agreement.

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(2) 1986 c.44.

**Commencement Information**

**110** (p00447) Sch. 9 Pt. 2 para. 4 in force at 28.10.2016, see [art. 1](#)

**Retained apparatus—Protection—Gas Protected Persons**

5.—(1) Not less than 56 days before the commencement of any authorised works authorised by this Order that are near to, or will or may affect, or where construction access is to be taken over, any apparatus the undertaker shall submit to the protected persons in question a plan.

(2) In relation to works or construction access 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, or works that are specified works, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

- (a) the exact position of the works or access route;
- (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;
- (f) intended maintenance regimes; and
- (g) a ground monitoring scheme.

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

(4) Any approval of the protected person required under sub-paragraph (2)—

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

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

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

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

(8) If a protected person in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives

written notice to the undertaker of that Requirement, paragraphs 1 to 3 and 6 to 8 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

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

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

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

(11) At all times when carrying out any works authorised under 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/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 works the undertaker shall implement an appropriate ground mitigation scheme save that the protected person 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 7.

**Commencement Information**

III (p00447) Sch. 9 Pt. 2 para. 5 in force at 28.10.2016, see [art. 1](#)

**Retained apparatus—Protection—Electricity Undertakers**

**6.—**(1) Not less than 56 days before the commencement of any authorised works authorised by this Order that are near to, or will or may affect, or where construction access is to be taken over, any apparatus the undertaker shall submit to the protected person in question a plan and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works or construction access 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 the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

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

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

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
  - (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
  - (c) details of load bearing capacities of trenches;
  - (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
  - (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
  - (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
  - (g) assessment of earth rise potential if reasonably required by National Grid's engineers.
  - (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of OHL construction traffic
- (4) The undertaker shall not commence any works to which sub-paragraph (2) or (3) apply until the protected person has given written approval of the plan so submitted.
- (5) Any approval of the protected person required under sub-paragraph (2) or (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8);
  - (b) shall not be unreasonably withheld.
- (6) In relation to a work to which sub-paragraph (2) or (3) apply, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (7) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as amended from time to time by agreement between the undertaker and the protected person in accordance with such reasonable Requirements as may be made in accordance with sub-paragraph (6) or (8) by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.
- (8) Where protected persons 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 protected persons' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) and the protected persons shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (5) (except in an emergency).
- (9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.
- (10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it shall give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and shall—
- (a) comply with sub-paragraph (6), (7) and (8) 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 development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works the undertaker shall implement an appropriate ground mitigation scheme save that the protected person 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 7.

**Commencement Information**

**I12** (p00447) Sch. 9 Pt. 2 para. 6 in force at 28.10.2016, see [art. 1](#)

**Expenses**

7.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to a protected person on demand all charges, costs and expenses reasonably anticipated or incurred by that protected person in, or in connection with, the inspection, or protection of any apparatus of any such works as are referred to in this Schedule including without limitation—

- (a) the cutting off of any apparatus from any other apparatus;
- (b) the approval of plans;
- (c) the carrying out of protective works (including but not limited to cathodic protection) plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (d) 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, that value being calculated after removal.

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

**Commencement Information**

**I13** (p00447) Sch. 9 Pt. 2 para. 7 in force at 28.10.2016, see [art. 1](#)

**Indemnity**

8.—(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 direct 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 Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or property of a protected person, or there is any interruption in any service provided, or in the supply of any goods, by any protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

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

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

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

(4) A protected person shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering its representations.

**Commencement Information**

**I14** (p00447) Sch. 9 Pt. 2 para. 8 in force at 28.10.2016, see [art. 1](#)

**Enactments and agreements**

**9.** Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a protected person 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**

**I15** (p00447) Sch. 9 Pt. 2 para. 9 in force at 28.10.2016, see [art. 1](#)

**Co-operation**

**10.** Where in consequence of the proposed construction of any of the authorised development a protected person makes Requirements for the protection or alteration of apparatus under paragraphs 5 and/or 6 the undertaker shall use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the protected person's undertaking and each protected person shall use all reasonable endeavours to co-operate with the undertaker for that purpose.

**Commencement Information**

**I16** (p00447) Sch. 9 Pt. 2 para. 10 in force at 28.10.2016, see [art. 1](#)

**Access**

**11.** If in consequence of the agreement reached in accordance with paragraph 4 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall

provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

**Commencement Information**

**I17** (p00447) Sch. 9 Pt. 2 para. 11 in force at 28.10.2016, see [art. 1](#)

**Arbitration**

**12.** Any difference or dispute arising between the undertaker and a protected person under this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 35 (arbitration).

**Commencement Information**

**I18** Sch. 9 para. 12 in force at 28.10.2016, see [art. 1](#)

## PART 3

### For the protection of Dwr Cymru Cyfyngedig

**1.** For the protection of DCC referred to in this Part 3 of Schedule 9, the following provisions shall, unless otherwise agreed in writing between the undertaker and DCC, have effect.

**Commencement Information**

**I19** (p00447) Sch. 9 Pt. 3 para. 1 in force at 28.10.2016, see [art. 1](#)

**2.** In this Part of this Schedule—

“accessories” has the same meaning as that set out in section 219 WIA 1991 but shall also include any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or surface water and which is part of a sustainable drainage system;

“DCC apparatus” means all apparatus or accessories vested in or belonging to DCC for the purpose of carrying on its statutory undertaking including reservoirs, water treatment works and waste water treatment works;

“clearance area” means the area of land—

- (a) within 3 metres either side of the centre line of any public sewer or public water main that is less than 300mm in diameter;
- (b) within 6 metres either side of a public sewer or public water main where the public sewer or public water main is between 300mm and 600mm in diameter ;
- (c) within 9 metres either side of the centre line of a rising main; and
- (d) applicable for any strategic asset crossing site.

“DCC” means Dŵr Cymru Cyfyngedig, a limited company registered in Wales under Company No. 2366777 and having its registered office at Pentwyn Road, Nelson, Treharris, Mid Glamorgan CF46 6LY or its properly authorised agents or sub-contractors;

“draft specification” means a detailed plan, cross- section and description of the works to be prepared by the undertaker (including, without limitation, a method statement and

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risk assessment setting out the intention in respect of the works, construction methods and programmes, position of the affected DCC apparatus and intended works and a statement that to the best of the undertaker’s knowledge, and having used all reasonable care and skill to plan the works, the works shall not cause damage to the DCC apparatus);

“functions” has the same meaning as in section 219 WIA 1991 and includes powers and duties;

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

“sustainable drainage system” means any structure designed to receive rainwater and other surface water which structure shall include any feature or aspect of design that is intended to receive or facilitate the receipt of rainwater except a public sewer or a natural watercourse;

“WIA 1991” means the Water Industry Act 1991(3); and

“works” means any works forming part of the authorised development in, on, over or under any land purchased, held, or used under this Order that are near to, or will or may in any way affect any DCC apparatus together with all ancillary actions relating hereto; and

for the avoidance of doubt, all other terms are as defined in Article 2 of this Order.

**Commencement Information**

**I20** (p00447) Sch. 9 Pt. 3 para. 2 in force at 28.10.2016, see [art. 1](#)

**3.—(1)** Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any DCC apparatus or its accessories or override or extinguish any easement or other interest of DCC or acquire any land or other interest of DCC identified in the book of reference or create any new rights over the same otherwise than by agreement with DCC in accordance with the provisions of this Schedule.

(2) Sub-paragraph (1) does not apply to the powers conferred on the undertaker by this Order to interfere temporarily with DCC’s rights to access DCC apparatus or accessories but subject always to paragraphs 7 and 8 of this Part and to the undertaker giving DCC 28 days’ notice of such interference.

**Commencement Information**

**I21** (p00447) Sch. 9 Pt. 3 para. 3 in force at 28.10.2016, see [art. 1](#)

**Precedence of the Water Industry Act 1991**

**4.—(1)** Regardless of any provision of this Order and this Schedule the undertaker shall comply fully with all provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DCC apparatus and nothing in this Order shall release the undertaker from the Requirement to comply with the provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DCC apparatus, including without limitation—

- (a) sections 41-44 of the WIA 1991 in respect of water main requisitions;
- (b) section 45 of the WIA 1991 in respect of any connections to a water main;
- (c) sections 98-101 of the WIA 1991 in respect of sewer requisitions;
- (d) section 102 of the WIA 1991 in respect of the adoption of sewers and disposal works;

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(3) [1991 c.56.](#)

- (e) section 104 of the WIA 1991 in respect of the adoption of any sewers, drains or sewage disposal works as part of the development;
- (f) sections 106 to 109 of the WIA 1991 (inclusive) in respect of any connections to public sewers;
- (g) section 111 of the WIA 1991 in respect of the restrictions on use of public sewers;
- (h) sections 158 and 159 of the WIA 1991 in respect of statutory rights of access to DCC apparatus;
- (i) section 174 of the WIA 1991 in respect of offences of interference with works etc;
- (j) section 178 of the WIA 1991 in respect of obstruction of sewerage works etc; and
- (k) section 185 of the WIA 1991 in respect of the removal, diversion or alteration of DCC apparatus.

(2) The arbitration provisions at article 35 or specified in this Schedule shall not apply where DCC uses a warrant of entry in accordance with the provisions of the WIA 1991.

#### **Commencement Information**

**I22** (p00447) Sch. 9 Pt. 3 para. 4 in force at 28.10.2016, see [art. 1](#)

#### **Protection of DCC apparatus**

5.—(1) Not less than 28 days before starting the execution of any works that are within the clearance area or will, or could reasonably foreseeably affect, any DCC apparatus the removal or alteration of which has not been required by the undertaker under paragraph 4(k), the undertaker shall submit to DCC written notice together with a draft specification.

(2) DCC shall examine the draft specification submitted under sub-paragraph 5(1) and give its written consent or proposed amendments (each not to be unreasonably withheld or delayed) to the draft specification (including the proposed commencement date and anticipated completion date) within 28 days from the date of receipt (and in the event of amendments the process in this sub-paragraph 5(2) shall be repeated where those amendments are not accepted). For the avoidance of doubt, DCC's proposed amendments may include such reasonable Requirements for the alteration (including but not limited to the extension of DCC apparatus) or otherwise for the protection of DCC apparatus, or for securing access to it.

(3) Once approved under sub-paragraph 5(2), the draft specification shall become the specification and the works shall be executed only in accordance with the specification and such reasonable Requirements as may be made in accordance with sub-paragraph 5(2) and DCC shall be entitled to watch and inspect the execution of those works.

(4) Nothing in this paragraph 5 shall preclude 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 draft specification instead of the draft specification previously submitted, and having done so the provisions of this paragraph 5 shall apply to and in respect of the new draft specification.

(5) The undertaker shall not be required to comply with sub-paragraph 5(1) in a case of emergency provided it has complied with paragraph 8 below save that the undertaker shall comply with sub-paragraphs 5(1) and (3) above in so far as is reasonably practicable in the circumstances.

(6) DCC may opt to carry out any temporary and/or protective works specified under sub-paragraph 5(2) to DCC apparatus, and if DCC opts to do so it shall—

- (a) agree the scope and timings of the works with the undertaker (and the undertaker shall not unreasonably withhold or delay its agreement to the same);

**Changes to legislation:** There are currently no known outstanding effects for the The Brechfa Forest Wind Farm Connection Order 2016, SCHEDULE 9. (See end of Document for details)

- (b) provide an invoice together with supporting evidence of the estimated costs of the works on the basis of which it shall agree with undertaker the reasonable costs of the works to be met by the undertaker;
  - (c) following agreement and payment of the costs, DCC shall as soon as reasonably practicable carry out and complete the works; and
  - (d) notify the undertaker immediately in writing upon completion of the temporary and/or protective works.
- (7) Only those contractors that satisfy DCC's reasonable health and safety Requirements are permitted to make openings into and/or connections with and/or carry out any works on or within any public sewer or drain vested in DCC unless otherwise agreed with DCC.
- (8) Only DCC is permitted to make openings into and/or connections with and/or carry out any works on or within any public water main vested in DCC unless otherwise agreed with DCC.
- (9) Where DCC apparatus will be affected by the works the undertaker must determine the exact location of DCC apparatus prior to any works being carried out by the undertaker and the undertaker should contact DCC where trial holes are required at the undertaker's expense.
- (10) Any affected DCC apparatus which is no longer required by DCC but is not removed shall be transferred to the undertaker by way of a deed of transfer from DCC at the undertaker's expense and on such terms as DCC reasonably requires.

**Commencement Information**

**I23** (p00447) Sch. 9 Pt. 3 para. 5 in force at 28.10.2016, see [art. 1](#)

**Suspension of works**

**6.—(1)** DCC shall be entitled to instruct the undertaker to suspend the works if in DCC's reasonable opinion the actions of the undertaker, or those of its contractor(s) or subcontractor(s) in carrying out the works, have caused damage to any DCC apparatus and/or are likely to cause or result in damage to any DCC apparatus and/or have caused or are likely to cause damage to the environment arising as a result of damage to DCC apparatus. In the event of such instruction being given by DCC—

- (a) the undertaker shall procure that it and its contractor(s) and subcontractor(s) shall forthwith suspend or cease the works having due regard to health and safety factors and shall discuss and agree with DCC the remedial actions required prior to resuming the works;
  - (b) the undertaker and DCC shall act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the works;
  - (c) DCC shall submit to the undertaker within 5 days following the suspension, a written notice specifying the reasons for suspending the works;
  - (d) in the event that DCC fails to supply the written notice within 5 days of suspension DCC's instruction to suspend the works shall be void and the undertaker shall be entitled to recommence the works; and
  - (e) DCC shall commence, carry out and complete any remedial works pursuant to subparagraph 6(1), as soon as reasonably practicable and DCC shall give the undertaker notice immediately upon completion of such remedial works and on receipt of such notice the undertaker shall be entitled to resume the works.
- (2) DCC shall be entitled to reclaim all reasonable costs of all remedial works undertaken in accordance with this paragraph 6.

**Commencement Information**

**I24** (p00447) Sch. 9 Pt. 3 para. 6 in force at 28.10.2016, see [art. 1](#)

7.—(1) In the event that either the undertaker or DCC (for the purpose of this paragraph 7 “the party” or together “the parties”) wishes to take any action which would impact on the ability of the undertaker to carry out the development or DCC to carry out its statutory functions, the parties shall use reasonable endeavours to cooperate with one another in order to align work streams so to minimise or avoid disruption to the other party’s works. In respect of the references to ‘work’ and ‘works’ in this sub-paragraph 7(1), to the extent that this refers to ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 2 of this Part does not apply.

(2) Subject to paragraph 8, differences or disputes arising between the undertaker and DCC under this Schedule shall, unless otherwise agreed in writing between the undertaker and DCC, be determined by arbitration in accordance with article 35 (arbitration) of the Order.

**Commencement Information**

**I25** (p00447) Sch. 9 Pt. 3 para. 7 in force at 28.10.2016, see [art. 1](#)

**Commencement Information**

**I24** (p00447) Sch. 9 Pt. 3 para. 6 in force at 28.10.2016, see [art. 1](#)

**I25** (p00447) Sch. 9 Pt. 3 para. 7 in force at 28.10.2016, see [art. 1](#)

**Emergency Works**

8.—(1) The undertaker is permitted to carry out emergency works provided that it first notifies DCC of the proposed emergency works.

(2) DCC shall at all times be permitted to carry out any emergency works in relation to its DCC apparatus within the Order Limits in accordance with Part II Schedule 6 WIA 1991.

(3) Emergency works required in order for DCC to fulfil its statutory functions under sub-paragraph 8(2) shall take precedence over works to be carried out by the undertaker and, in such circumstances, the undertaker shall reschedule its works accordingly.

(4) In respect of the references to ‘work’ and ‘works’ in this paragraph 8, to the extent that this is ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 2 of this Part does not apply.

**Commencement Information**

**I26** (p00447) Sch. 9 Pt. 3 para. 8 in force at 28.10.2016, see [art. 1](#)

## PART 4

### For the protection of Wales and West Utilities Limited

#### Application

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

#### Commencement Information

I27 (p00447) Sch. 9 Pt. 4 para. 1 in force at 28.10.2016, see [art. 1](#)

#### Interpretation

2. In this Part of this Schedule—

“acceptable insurance” means third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £10,000,000 (Ten Million Pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the entire construction period of the authorised works;

“apparatus” means in the case of the protected person, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

“authorised works” has the same meaning as in Schedule 1 (authorised development) of this Order;

“commencement” has the same meaning as in paragraph 1 of Schedule 3 (Requirements) and commence shall be construed to have the same meaning;

“functions” includes powers and duties;

“in” in a context referring to apparatus in land includes a reference to 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 of the protected person 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;

“protected person” means Wales and West Utilities Limited, a limited company registered under Company No 05046791 and having its registered office at Wales & West House, Spooner Close Coedkernew, Newport, South Wales NP10 8FZ, being a gas transporter within the meaning of Part 1 of the Gas Act 1986; and

#### Commencement Information

I28 (p00447) Sch. 9 Pt. 4 para. 2 in force at 28.10.2016, see [art. 1](#)

3. Except for paragraphs 5 (retained apparatus: Protection Gas Undertakers) and 6 (expenses) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

**Commencement Information**

**I29** (p00447) Sch. 9 Pt. 4 para. 3 in force at 28.10.2016, see [art. 1](#)

**Commencement Information**

**I28** (p00447) Sch. 9 Pt. 4 para. 2 in force at 28.10.2016, see [art. 1](#)

**I29** (p00447) Sch. 9 Pt. 4 para. 3 in force at 28.10.2016, see [art. 1](#)

**Acquisition of Land**

4. 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 shall not acquire any land interest or apparatus or override any easement or other interest of the protected person otherwise than by agreement.

**Commencement Information**

**I30** (p00447) Sch. 9 Pt. 4 para. 4 in force at 28.10.2016, see [art. 1](#)

**Retained apparatus: Protection: Protected Persons**

5.—(1) Not less than 56 days before the commencement of any authorised works authorised by this Order that are near to, or will or may affect, any apparatus the undertaker shall submit to the protected person in question a plan.

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

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant 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) intended maintenance regimes.

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

(4) Any approval of the protected person required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) shall not subject to sub-paragraph 4(a) be unreasonably withheld.

(5) In relation to a work to which sub-paragraph (2) applies, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing

its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

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

(7) Where protected persons require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected persons' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) and the protected person shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (4) (except in an emergency).

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

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

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

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

(11) At all times when carrying out any works authorised under the Order comply with Wales and West Utilities Limited's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of pipelines and associated installation operating above 2 BAR's" and HSE's "HSG47 Avoiding Danger from underground services".

#### **Commencement Information**

**I31** (p00447) Sch. 9 Pt. 4 para. 5 in force at 28.10.2016, see [art. 1](#)

#### **Expenses**

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

- (a) the cutting off of any apparatus from any other apparatus;
- (b) the approval of plans;
- (c) the carrying out of protective works (including any temporary protective works and their removal);

(d) 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) The undertaker shall not be liable to the protected person pursuant to paragraph (1) unless the protected person has submitted to and agreed with the undertaker details of the works required unless such works are required in an emergency.

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

#### **Commencement Information**

**I32** (p00447) Sch. 9 Pt. 4 para. 6 in force at 28.10.2016, see [art. 1](#)

#### **Indemnity**

7.—(1) If by reason or in consequence of the construction of any such works authorised by this Order or in consequence of the construction, use, maintenance or failure of any of the authorised 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 works, including without limitation works carried out by the undertaker under this Order or any subsidence resulting from any of these works), any damage is caused to any apparatus or property of the protected person, or there is any interruption in any service provided, or in the supply of any goods, by any protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by the protected person in making good such damage or restoring the supply; and
- (b) indemnify the protected person 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 protected person becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by a protected person on behalf of the undertaker or in accordance with a plan approved by a protected person or in accordance with any Requirement of the protected person or under its supervision shall not, excuse the undertaker from liability under the provisions of sub-paragraph (1) except where such act or thing done has been done as a result of the negligence of the protected person.

(3) The protected person shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and taking into account its representations.

(4) Not commence construction (and not to permit the commencement of such construction) of the authorised works on any land either owned by the protected person in respect of which the protected person has an easement or wayleave for their Apparatus or any other interest or to carry out any works within 15 metres of the protected person's Apparatus unless and until the protected person is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to the protected person that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and the protected person has confirmed the same in writing to the undertaker.

(5) Notwithstanding any other provision in this Schedule and or the provisions of sub-paragraph 7(2) of this Schedule and for the avoidance of doubt, the protected person shall not be deemed whether by admission, approval, consent, confirmation, acknowledgement, inspection or otherwise to have assumed any responsibility for the plan or any authorised works (without limitation) carried out or to be carried out nor shall the protected person be deemed to have accepted, acknowledged or given or made any representation that the authorised works shall not cause any damage to any Apparatus.

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**Commencement Information**

**I33** (p00447) Sch. 9 Pt. 4 para. 7 in force at 28.10.2016, see [art. 1](#)

**Enactments and agreements**

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

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**Commencement Information**

**I34** (p00447) Sch. 9 Pt. 4 para. 8 in force at 28.10.2016, see [art. 1](#)

**Co-operation**

**9.** Where in consequence of the proposed construction of any of the authorised works the protected person makes Requirements for the protection or alteration of apparatus under paragraphs 5 the undertaker shall use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the protected person's undertaking and the protected person shall use all reasonable endeavours to co-operate with the undertaker for that purpose.

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**Commencement Information**

**I35** (p00447) Sch. 9 Pt. 4 para. 9 in force at 28.10.2016, see [art. 1](#)

**Access**

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

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**Commencement Information**

**I36** (p00447) Sch. 9 Pt. 4 para. 10 in force at 28.10.2016, see [art. 1](#)

## Arbitration

11. Any difference or dispute arising between the undertaker and the protected person under this Schedule shall, unless otherwise agreed in writing between the undertaker and the protected person, be determined by arbitration in accordance with article 35 (arbitration).

### Commencement Information

I37 (p00447) Sch. 9 Pt. 4 para. 11 in force at 28.10.2016, see [art. 1](#)

## PART 5

### For the protection of operators of electronic communications code networks

1. For the protection of any operator, the following provisions are to have effect, unless otherwise agreed in writing between the undertaker and the operator.

### Commencement Information

I38 (p00447) Sch. 9 Pt. 5 para. 1 in force at 28.10.2016, see [art. 1](#)

2. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(4);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

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

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of, or paragraph 17 of Schedule 18 to, the 2003 Act; and

“operator” means the operator of an electronic communications code network.

### Commencement Information

I39 (p00447) Sch. 9 Pt. 5 para. 2 in force at 28.10.2016, see [art. 1](#)

(4) 2003 c. 21. There are amendments to the Act which are not relevant to this Order.

3. The exercise of the powers of article 30 (statutory undertakers) are subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(5).

**Commencement Information**

**I40** (p00447) Sch. 9 Pt. 5 para. 3 in force at 28.10.2016, see [art. 1](#)

4.—(1) Subject to sub-paragraphs (2) and (3), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works 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) the undertaker must bear and pay the cost reasonably and properly incurred by the operator in making good such damage.

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

(3) Any difference arising between the undertaker and the operator under this paragraph is to be referred to and settled by arbitration under article 35 (arbitration).

**Commencement Information**

**I41** (p00447) Sch. 9 Pt. 5 para. 4 in force at 28.10.2016, see [art. 1](#)

5. 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 of the 1991 Act; or
- (b) any damage caused by electro-magnetic interference arising from the construction or use of the authorised development.

**Commencement Information**

**I42** (p00447) Sch. 9 Pt. 5 para. 5 in force at 28.10.2016, see [art. 1](#)

6. Nothing in this Part of this Schedule 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**

**I43** (p00447) Sch. 9 Pt. 5 para. 6 in force at 28.10.2016, see [art. 1](#)

(5) [1984 c. 12](#). There are amendments to the Act which are not relevant to this Order.

**Changes to legislation:**

There are currently no known outstanding effects for the The Brechfa Forest Wind Farm Connection Order 2016, SCHEDULE 9.