

SCHEDULE 10

Protective provisions

PART 13

For the protection of United Kingdom Oil Pipelines Limited

154. For the protection of United Kingdom Oil Pipelines Limited

Application

155. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and UKOP.

Interpretation

156. In this Part—

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

“alternative apparatus” means alternative apparatus adequate to enable UKOP to fulfil its functions as a private commercial fuel pipeline operator/transporter in a manner no less efficient than previously;

“apparatus” means the whole or any part of any pipeline cable or other apparatus owned or operated by UKOP (or its authorised agents) used in connection with the transmission of hydrocarbon fuel together with any other plant and equipment ancillary thereto (which includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus);

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

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

“ground mitigation scheme” means a scheme approved by UKOP (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 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 UKOP’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;

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“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 land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of UKOP 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;

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

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 157(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 157(2) or otherwise;

“UKOP” means United Kingdom Oil Pipelines Limited (Co. No.00746709) whose registered office is at 5-7 Alexandra Road, Hemel Hempstead, Hertfordshire, HP2 5BS; and

“undertaker” means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

157. Except for paragraph 161 (retained apparatus) and 162 (expenses and costs) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of UKOP, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and UKOP are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition or possession of land

158.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of UKOP otherwise than by agreement (all such agreement(s) not to be unreasonably withheld or delayed) and unless it grants replacement rights to UKOP in a form agreed between the parties in accordance with the provisions of paragraph 159 (Removal of apparatus) or paragraph 160 (UKOP Replacement facilities and rights).

(2) As a condition of any agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between UKOP and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of UKOP or affect the provisions of any enactment or agreement regulating the relations between UKOP and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as UKOP reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between UKOP and the undertaker, both acting reasonably, and which must be no less favourable on the whole to UKOP unless otherwise agreed by UKOP, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and UKOP agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of

apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by UKOP and/or other enactments relied upon by UKOP as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by UKOP under paragraph 161 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

159.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that UKOP's apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of UKOP to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of UKOP in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to UKOP 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 UKOP reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to UKOP to its reasonable satisfaction (taking into account paragraph 160(1) below) the necessary facilities and rights

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

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

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

(5) UKOP must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to UKOP of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule

UKOP replacement facilities and rights

160.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker is to afford to or secure for UKOP facilities and rights in land for the construction, use, maintenance and protection of apparatus either in substitution for apparatus to be removed (or where existing rights are being sterilized), deeds of consent must be granted upon such terms and conditions as may be agreed between the undertaker and UKOP both acting reasonably and must be no less favourable on

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the whole to UKOP than the facilities and rights enjoyed by it previously in respect of the apparatus unless otherwise agreed by UKOP and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(2) If the facilities and rights to be afforded by the undertaker pursuant to sub-paragraph (1) above, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to UKOP than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 166 (Arbitration) of this Part of this Schedule the arbitrator must make such provision for the payment of compensation by the undertaker to UKOP as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

161.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to UKOP a plan and, if reasonably required by UKOP, a ground monitoring scheme in respect of those works taking place within 20 metres of the apparatus.

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

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

(3) In relation to any works which will or may be situated within 6.1 metres measured in any direction of any apparatus (the removal of which has not been required by the undertaker under paragraph 157(2) or otherwise), the plan to be submitted under sub-paragraph (1) must also describe—

- (a) details of any trench design including route, dimensions and clearance to the apparatus;
- (b) demonstration that the apparatus will not be affected prior to, during and post construction; and
- (c) details of load bearing capacities of trenches.

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

(5) UKOP may within 10 working days of initial receipt of the plan submitted under sub-paragraph (1) raise any additional questions or comments or request further information and/or clarification in relation to the plan.

(6) Any approval of UKOP required under sub-paragraph (4):

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (8) or (10); and
- (b) must not be unreasonably withheld or delayed.

(7) UKOP is deemed to have approved the plan as submitted under sub-paragraph (1) if UKOP has not intimated its approval or disapproval of the plan, and the grounds of that disapproval, within 30 working days after the plan or the responses to any additional questions, comments, further information or clarification raised or requested under sub-paragraph (5) has been received by UKOP.

(8) In relation to any work to which sub-paragraphs (1), (2) and/or (3) apply, UKOP may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(9) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and UKOP and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (8) or (10) by UKOP for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and UKOP will be entitled to watch and inspect the execution of those works.

(10) Where UKOP reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to UKOP's satisfaction, acting reasonably, prior to the commencement of any specified works for which protective works are required and UKOP give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(11) If UKOP in accordance with sub-paragraphs (8) or (10) 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) and (8) to (10) apply as if the removal of the apparatus had been required by the undertaker under paragraph 159(2).

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

(13) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to UKOP notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (8), (9) and (10) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (14) at all times.

(14) At all times when carrying out any works authorised under the Order the undertaker must ensure that all works comply with:

- (a) Linewatch's Booklet for Special Requirements for safe working in close proximity to high pressure pipelines (rev23.03); and
- (b) Linesearch Before U Dig (LinesearchbeforeUdig Safety Practices - LinesearchbeforeUdig (lsbud.co.uk)); and
- (c) The United Kingdom Onshore Pipeline Operators' Association Good Practice Guides (Good Practice Guides | UKOPA); and
- (d) The Pipeline Safety Regulations 1996; and
- (e) The Pipe-lines Act 1962;

(all as updated or replaced from time to time).

(15) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that UKOP retains the right to carry out any further reasonably necessary protective works for

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the safeguarding of its apparatus and can recover any such reasonable costs in line with paragraph 160 (Expenses and costs).

Expenses and costs

162.—(1) Save where otherwise agreed in writing between UKOP and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to UKOP within 25 days of receipt of an itemised invoice or claim from UKOP all charges, costs and expenses (including legal expenses) reasonably and properly incurred by UKOP in, pursuant to, or in connection with these protective provisions, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs and expenses (including but not limited to reasonable legal expenses) reasonably incurred by or compensation properly paid by UKOP in connection with the acquisition, variation or grant of any rights or the exercise of any statutory powers in respect of such apparatus;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (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 reasonably required protective works, plus a capitalised sum to cover the reasonable 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 for the execution of any such works referred to in this Part of this Schedule; or
- (g) any costs and expenses (including but not limited to legal expenses) reasonably incurred in assisting the undertaker to procure and/or secure any consent and entering into of any deeds and/or variations by other third parties required in connection with this Part of this Schedule, save that for the avoidance of any doubt—
 - (i) the undertaker be directly responsible for the payment of all third party costs and expenses where the undertaker is a party to any such deeds or variations; and
 - (ii) where the undertaker is not a party to such deeds or variations, or where a consent is procured or secured by UKOP, UKOP and the undertaker shall, acting reasonably and without unreasonable delay, agree the amount of third party costs and expenses that can be paid by UKOP to the third party and recovered from the undertaker under this paragraph 162(1).

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 166 (Arbitration)

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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 UKOP by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

(5) Any amount which apart from this sub-paragraph would be payable to UKOP in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on UKOP 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) Subject to sub-paragraph (2), if by reason or in consequence of the construction of the authorised works (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) on property of UKOP, or there is any interruption in any service provided, or in the supply of any goods, by UKOP, the undertaker must:

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

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

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

Miscellaneous

163. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between UKOP and the undertaker, nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and UKOP in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

Co-operation

164.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or UKOP requires the removal of apparatus under paragraph 159(2) or UKOP makes requirements for the protection or alteration of apparatus under paragraph 160, the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the

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efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of UKOP's undertaking and UKOP must use reasonable endeavours to co-operate with the undertaker for that purpose including using reasonable endeavours (at the undertaker's cost) to assist the undertaker to procure and/or secure any consent and entering into of any deeds and/or variations by other third parties required in connection with this Part of this Schedule.

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

Access

165. If in consequence of the agreement reached in accordance with paragraph 158(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable UKOP to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

166. Any difference or dispute arising between the undertaker and UKOP under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and UKOP, be determined by arbitration in accordance with article 47 (arbitration).

Notices

167. Notwithstanding article 45 (service of notices), any plans submitted to UKOP by the undertaker pursuant to this Part must be sent to the then Company Secretary of UKOP at its then current registered address or such other address as UKOP may from time to time appoint instead for that purpose and notify to the undertaker in writing.

Deviation of authorised development

168. Notwithstanding article 5 of the Order (Power to maintain the authorised development) the undertaker is not permitted to install or deviate vertically the authorised works to a limit less than 2.5 metres below the surface of the ground and no closer than 600mm provided that where directional drilling methods are to be used this minimum distance shall be increased to a 1.5 metre clearance from the apparatus.