

**THE INFRASTRUCTURE PLANNING
(EXAMINATIONS PROCEDURE) RULES 2010
EAST ANGLIA THREE OFFSHORE WIND FARM**

WRITTEN REPRESENTATION ON BEHALF OF
NATIONAL GRID

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1 INTRODUCTION

- 1.1 The Examining Authority set out a draft timetable pursuant to Rule 8 of The Infrastructure Planning (Examinations Procedure) Rules 2010 (the "Procedure Rules") at Annex B of its letter dated 6 July 2016 about matters relevant to the East Anglia Three Offshore Wind Farm that is being promoted by East Anglia Three Limited ("the Applicant").
- 1.2 National Grid Plc submitted a representation to the Examining Authority on 15 April 2016 on behalf of National Grid Gas Plc and National Grid Electricity Plc, the details of which are set out below.
- 1.3 This document sets out National Grid's written representation in accordance with the Rule 8 letter.

2 NATIONAL GRID NOTIFICATION TO EXAMINING AUTHORITY OF ITS WISH TO BE AN INTERESTED PARTY

On 15 April 2016, National Grid made the following representation:

"NATIONAL GRID ELECTRICITY INFRASTRUCTURE IN THE VICINITY OF THE PROPOSED WORKS

National Grid Electricity Transmission PLC ("NGET") has high voltage electricity overhead transmission lines within or in close proximity to the onshore cable corridor and the converter station location. Details of the overhead transmission lines are as follows:

- (a) 4YL 400kV from Bramford substation to Braintree substation;*
- (b) 4YM 400kV from Bramford substation to Norwich Main substation;*
- (c) 4ZW 400kV from Bramford substation to Sizewell 1 substation;*
- (d) 4ZX 400kV from Bramford substation to Sizewell 2 substation.*

In addition, NGET's Bramford (400kV/132kV) electricity substation is located adjacent to the onshore substations.

The Works Plans show that the onshore connection works (Work No's 55, 62, 63, 64, 66) cross all of the above high voltage electricity overhead lines and the onshore substations (Work No. 67) incorporates part of the 4YM overhead line. The overhead lines and substation form essential parts of the electricity transmission network in England and Wales.

In respect of all NGET infrastructure located within the DCO boundary, or in close proximity to proposed project and associated works, NGET will require protective provisions to be put in place to ensure appropriate protection for the retained apparatus is maintained during and after construction of the project including compliance with all relevant standards on safety clearances "EN 43 -8", "Development near overhead lines" and HSE Guidance Note GS6 "Avoiding Danger from Overhead Electric Lines". In addition crossing agreements will be required in relation to equipment crossed by the cable routes.

NATIONAL GRID GAS INFRASTRUCTURE WITHIN THE VICINITY OF THE PROPOSED WORKS

National Grid Gas Plc. ("NGG") have high pressure and medium pressure gas distribution pipelines located within or in close proximity to the onshore cable corridor. NGG owns and operates the gas distribution network within this area and this equipment is essential to the efficient and reliable operation of this network.

In respect of all NGG infrastructure located within the DCO boundary, or in close proximity to the proposed project and associated works, NGG will require protective provisions to be put in place to ensure appropriate protection for the retained apparatus is maintained during and after construction of the project including compliance with all relevant standards for works being carried out within the relevant tolerances to Gas Equipment contained in T/SP/SSW22 and HSE G 47 "Avoiding danger from underground services". In addition crossing agreements will be required in relation to equipment crossed by the cable routes.

OVERVIEW

In relation to both NGET and NGG assets relevant guidance can be provided on request. Plans showing Gas and Electricity Assets in the area can also be provided on request.

In light of the above infrastructure (identified in paragraph 1 and 2) being located within the DCO boundary or in the vicinity of it, National Grid Gas Plc. and National Grid Electricity Transmission PLC wish to make a relevant representation to the above DCO in order to protect their position given the existence of this infrastructure and any other equipment within or adjoining the DCO boundary not already identified. Additionally National Grid want to ensure that any connections taken to their existing equipment are carried out in an approved manner.

The protective provisions included within the DCO substantially reflect National Grid's standard terms. However, National Grid will continue to review the details of the protective provisions included in the order as more details about the scheme are discussed with the Promoter.

As a responsible statutory undertaker, National Grid's primary concern is to meet its statutory obligations and ensure that any development does not impact in any adverse way upon those statutory obligations.

National Grid reserves the right to make further representations as part of the examination process but in the meantime will continue negotiations with the promoter with a view to reaching a satisfactory agreement".

3 NATIONAL GRID'S WRITTEN REPRESENTATION

3.1 As stated in the representation of 15 April 2016, National Grid's interests are as follows:

- (a) National Grid Electricity Transmission PLC ("NGET") is a statutory undertaker in connection with the proposed application and has high voltage electricity overhead transmission lines within or in close proximity to the onshore cable corridor and the converter station location.
- (b) National Grid Gas Plc. ("NGG") have high pressure and medium pressure gas distribution pipelines located within or in close proximity to the onshore cable corridor. NGG owns and operates the gas distribution

network within this area and this equipment is essential to the efficient and reliable operation of this network.

- 3.2 National Grid is submitting this holding objection to the proposal on the grounds that no agreed and settled protective provisions have yet been agreed with the Applicant or included within the Development Consent Order (DCO) application to safeguard National Grid's existing apparatus and protect National Grid's statutory undertaking. Provisions should be included to prevent the undertaker from interfering with National Grid's equipment without having first obtained consent from NG to any such interference. While National Grid does not object to the proposal in principle, it is essential that such protection is secured for National Grid as a statutory undertaker. Negotiations are currently ongoing with the promoter to reach an agreement.
- 3.3 As a responsible statutory undertaker, National Grid's primary concern is the maintenance of its equipment and the requirement to ensure that any authorised development within the vicinity of its equipment is undertaken without impacting upon its undertaking.
- 3.4 National Grid has been in negotiations with the Applicant to reach an agreement and provided an updated set of protective provisions to the Applicant for this purpose on 12 July 2016, a copy of which is attached to this representation as the Appendix. On 26 July 2016, the Applicant's solicitors provided some comments on the draft protective provisions dated 12 July 2016 but stated that they were still seeking instructions from their client. We have incorporated the comments received from the Applicant on 26 July 2016 into the draft protective provisions appended to this representation.
- 3.5 National Grid will continue to seek agreement with the Applicant on the protective provisions. However, in the event an agreement cannot be reached, National Grid would expect its preferred protective provisions to be incorporated into the DCO, as attached to this representation at the Appendix.
- 3.6 National Grid reserves the right to make further representations as part of the examination process and appear at the hearing as necessary but in the meantime will continue negotiations with the promoter with a view to reaching a satisfactory agreement.

Berwin Leighton Paisner LLP

27 July 2016

Appendix
National Grid Preferred Protective Provisions

SCHEDULES

SCHEDULE 8

PROTECTIVE PROVISIONS

PART 5

FOR THE PROTECTION OF NATIONAL GRID GAS PLC AND NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Application

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

Interpretation

49. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means **appropriate alternative apparatus to the reasonable satisfaction** of the statutory undertaker to enable the statutory undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means—

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

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

"commence" has the same meaning as article 2 of this Order;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by the statutory undertaker (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, must require the undertaker to submit for the statutory undertaker's approval a ground mitigation scheme;

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

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

"maintain" and "maintenance" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the statutory undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus

“parent company” means a parent company of the undertaker acceptable to and which has been approved by the statutory undertaker acting reasonably;

"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;

"undertaker" means the undertaker as defined in article 2 of this Order;

"statutory undertaker" means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989; and
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986.

Apparatus of statutory undertakers in stopped up streets

50. Without prejudice to the generality of any other protection afforded to the statutory undertaker elsewhere in the Order, where any street is stopped up under article 10 (stopping up of streets and extinguishment of rights), if the statutory undertaker has any apparatus in the street or accessed via that street the undertaker will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to the statutory undertaker, or will procure the granting to the statutory undertaker of, legal easements reasonably satisfactory to the specified statutory undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway

50 (2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 10 (temporary stopping up of streets), a statutory undertaker is at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of land

51. 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 must not acquire any interest in land or any apparatus or override any easement or other interest of the statutory undertaker otherwise than by agreement.

(2) As a condition of agreement between the statutory undertaker and the undertaker in paragraph 51(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between the statutory undertaker and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of the statutory undertaker and/or affects the provisions of any enactment or agreement regulating the relations between the statutory undertaker and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as the statutory undertaker reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between the statutory undertaker and the undertaker acting reasonably and which must be no less favourable on the whole to the statutory undertaker unless otherwise agreed by the statutory undertaker, 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 the statutory undertaker 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 the statutory undertaker and/or other enactments relied upon by the statutory undertaker as of right or other use in relation to the apparatus, then the provisions in this part of this Schedule must prevail unless otherwise agreed by the statutory undertaker and the undertaker.

Removal of apparatus

52. (1) If, in the exercise of the agreement reached in accordance with paragraph (4) or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of a statutory undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the satisfaction of the statutory undertaker in question in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a statutory undertaker needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker to their satisfaction (taking into account 6(1) below) the necessary facilities and rights for

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

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

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

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with the statutory undertaker under 7(1) above in respect of any alternative apparatus, and the terms and conditions

subject to which those facilities and rights are to be granted less favourable on the whole to the statutory undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection Gas Undertakers

54. —(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2) or otherwise, the undertaker must submit to the statutory undertaker in question a plan, and, if required by the statutory undertaker, a ground monitoring scheme in respect of those works.
- (2) The plan to be submitted to the statutory undertaker under sub-paragraph (1) must be detailed including a material statement and describing—
- (a) the exact position of the works;
 - (b) the level at which these are proposed to be constructed or renewed;
 - (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
 - (d) the position of all apparatus; and
 - (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
 - (f) any intended maintenance regimes.
- (3) The undertaker must not commence any works to which subparagraph (1) or (2) applies until the statutory undertaker has given written approval of the plan so submitted.
- (4) Any approval of the statutory undertaker required under sub-paragraph (3)-
- (a) may be given subject to reasonable conditions for any purpose mentioned in subparagraph (5) or (7);
 - (b) must not be unreasonably withheld.
- (5) In relation to a work to which sub-paragraph (1) or (2) applies, the statutory undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Works executed under this Order must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (2), as amended from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) 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 is entitled to watch and inspect the execution of those works.
- (7) Where statutory undertakers require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the statutory undertakers' satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part thereof) and the statutory undertakers must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).
- (8) If a statutory undertaker 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 must apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

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

(10) The undertaker 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 statutory undertaker 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 the undertaker must comply with the statutory undertaker's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW27" and HSE's "HS(--G)47 Avoiding Danger from underground services".

(12) 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 the statutory undertaker 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 56.

Retained apparatus: protection: electricity undertakers

55. —(1) **Not** less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2) or otherwise, the undertaker must submit to the statutory undertaker in question a plan of the works to be executed and seek from the statutory undertaker details of the underground extent of their electricity foundations.

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

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

(3) In relation to any works which will or may be situated on, over, under or within [15] metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing; -

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;

- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by the statutory undertaker's engineers.
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic

The undertaker must not commence the construction or renewal of any works to which subparagraph (1) or (2) applies until the statutory undertaker has given written approval of the plan so submitted.

- (4) Any approval of the statutory undertaker required under sub-paragraph (3)—
 - (a) may be given subject to reasonable conditions for any purpose mentioned in subparagraph (5) or (7);
 - (b) must not be unreasonably withheld.
- (5) In relation to a work to which sub-paragraph (1) or (2) applies, the statutory undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Works executed under this Order must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (2), as amended from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) 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 is entitled to watch and inspect the execution of those works.
- (7) Where statutory undertakers require any protective works to be carried out either themselves 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 the statutory undertakers' satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part thereof) and the statutory undertakers must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).
- (8) If a statutory undertaker 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 5(2).
- (9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.
- (10) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan of those works and must—
 - (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
 - (b) comply with sub-paragraph (11) at all times.
- (11) At all times when carrying out any works authorised under the Order the undertaker must comply with the statutory undertaker's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

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

- (a) any costs reasonably incurred by or compensation properly paid by the undertaker in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by the statutory undertaker as a consequence of the undertaker;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 52(3); and/or
 - (ii) exercising any compulsory acquisition powers in the Order transferred to or benefitting the statutory undertaker
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 33 (*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 subparagraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity, dimensions or place at the existing depth in which case full costs shall 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 shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the 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.

Indemnity

57. —(1) Subject to sub-paragraphs (2), (3) and (4), if by reason or in consequence of the construction of any such works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the 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 alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, or the statutory undertaker becomes liable to pay any amount to any third party, the undertaker must—

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

(2) The fact that any act or thing may have been done by a statutory undertaker on behalf of the undertaker or in accordance with a plan approved by a statutory undertaker or in accordance with any requirement of a statutory undertaker or under its supervision does 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) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(b) any authorised works and/or any other works authorised by this Schedule carried out by the statutory undertaker as an assignee, transferee or lessee of the statutory undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 [or article [●] (consent to transfer benefit of order)] subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Schedule including this paragraph 57.

(4) A statutory undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without first consulting the undertaker and considering their representations .

Ground subsidence monitoring scheme in respect of statutory undertaker's apparatus

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

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

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;

- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for statutory undertaker's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

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

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

Enactments and agreements

59. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a statutory undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

60. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a statutory undertaker requires the removal of apparatus under paragraph 5(2) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 7 or 8 the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the statutory undertaker's undertaking and each statutory undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

Access

61. 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 must provide such alternative means of access to such apparatus as enables the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

62. Save for differences or disputes arising under paragraph 5(2), 5(4), 6(1), 7 and 8 any difference or dispute arising between the undertaker and a statutory undertaker under this Schedule must, unless otherwise agreed in writing between the undertaker and that statutory undertaker, be determined by arbitration in accordance with article 33 (*arbitration*).