

# REPORT

## **Boston Alternative Energy Facility**

Appendix B: Response to ExA's Written Question  
Q5.0.2

Client: Alternative Use Boston Projects Ltd

Planning Inspectorate EN010095

Reference:

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**Response to Examiner's First Written Questions (Q5.0.2) regarding Protective Provisions**

**WQ 5.0.2:**

Please provide a schedule of Protective Provisions contained in the dDCO, including details of:

- **Body Protective Provision concerns;**
- **Brief title summarising Protective Provision;**
- **Progress status; and**
- **Outstanding issues.**

The table below provides the requested summary and status update on the Protective Provisions included in Schedule 8 of the draft DCO (**dDCO**) for statutory undertakers affected by the proposal. This is based on the version of the dDCO submitted at Deadline 1 (REP1-003).

<b>dDCO reference (Schedule 8)</b>	<b>Protective Provision</b>	<b>Summary</b>	<b>Progress status</b>	<b>Outstanding issues</b>
<b>PART 1 FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS</b>				
Paragraph 1	For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.	Introduction	These Protective Provisions apply to a number of stakeholders, including Anglian Water and Western Power Distribution (WPD).	
Paragraph 2	In this Part of this Schedule— “alternative apparatus” means alternative apparatus adequate to enable the utility 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(a)), 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	Interpretation	<p>The Applicant and Anglian Water are currently in discussions regarding a bespoke set of Protective Provisions, for Anglian Water. The Applicant will update the Examining Authority once the parties have concluded their discussions on such.</p> <p>The Applicant and WPD are currently in discussions regarding an Asset Protection Agreement. That Agreement may include references to amended</p>	

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	<p>within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;</p> <p>(c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and</p> <p>(d) in the case of a sewerage undertaker—</p> <p>(i) any drain or works vested in the undertaker under the Water Industry Act 1991(c); and</p> <p>(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(d) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at a future date) of that Act, and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;</p> <p>“functions” includes powers and duties;</p> <p>“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;</p> <p>“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;</p> <p>“utility undertaker” means—</p> <p>(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;</p> <p>(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;</p> <p>(c) a water undertaker within the meaning of the Water Industry Act 1991; and</p>		Protective Provisions to be read as if they were in the draft DCO but will not be incorporated into the draft DCO.	

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.			
Paragraph 3	This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.	On street apparatus		
Paragraph 4	<p>(1) Where any street is stopped up under article 14 (permanent stopping up of streets), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.</p> <p>(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 13 (temporary closure, alteration, diversion and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and 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.</p>	Apparatus in stopped up streets		
Paragraph 5	The undertaker, in the case of the powers conferred by article 22 (protective work to buildings), must exercise those powers	Protective works to buildings		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	so as not to obstruct or render less convenient the access to any apparatus.			
Paragraph 6	Regardless of any provision in this Order or anything shown on the land plan and Crown land plan, the undertaker must not acquire any apparatus otherwise than by agreement.	Acquisition of land		
Paragraph 7	<p>(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 the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker 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 the utility undertaker in question in accordance with sub-paragraphs (2) to (6).</p> <p>(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' 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 utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.</p> <p>(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or</p>	Removal of apparatus		

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	<p>the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker 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 the land in which the alternative apparatus is to be constructed.</p> <p>(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 50 (arbitration).</p> <p>(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 50 (arbitration), and after the grant to the utility undertaker 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.</p> <p>(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.</p> <p>(7) If the utility undertaker in question fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable,</p>			

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	<p>any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved.</p> <p>(8) For the avoidance of doubt, any such “deemed consent” under sub-paragraph (7) does not extend to the actual undertaking of the removal works, which remains the sole responsibility of the utility undertaker or its contractors.</p>			
Paragraph 8	<p>(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 50 (arbitration).</p> <p>(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.</p>	Facilities and rights for alternative apparatus		
Paragraph 9	(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the	Retained apparatus		

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	<p>undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.</p> <p>(2) Those works must be executed only in accordance with the plan submitted under subparagraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.</p> <p>(3) Any requirements made by a utility undertaker under subparagraph (2) must be made within a period of 21 days beginning with the date on which a plan under subparagraph (1) is submitted to it.</p> <p>(4) If a utility undertaker in accordance with subparagraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).</p> <p>(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.</p> <p>(6) The undertaker is not required to comply with subparagraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with subparagraph (3) in so far as is reasonably practicable in the circumstances.</p>			



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Paragraph 10	<p>(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).</p> <p>(2) There must 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.</p> <p>(3) If in accordance with the provisions of this Part of this Schedule—</p> <p>(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</p> <p>(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 50 (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 utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.</p> <p>(4) For the purposes of sub-paragraph (3)—</p> <p>(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of</p>	Expenses and costs		

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	<p>apparatus of greater dimensions than those of the existing apparatus; and</p> <p>(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 is to be treated as if it also had been agreed or had been so determined.</p> <p>(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.</p>			
Paragraph 11	<p>(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or 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 utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must— (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and</p> <p>(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,</p> <p>(c) by reason or in consequence of any such damage or interruption.</p> <p>(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its</p>	Expenses and costs		

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	<p>supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the utility undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.</p> <p>(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 act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.</p> <p>(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.</p>			
Paragraph 12	<p>Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use 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 utility undertaker's undertaking and each utility undertaker must use its best endeavours to cooperate with the undertaker for that purpose.</p>	Cooperation		
Paragraph 13	<p>Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.</p>	Cooperation		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
<b>PART 2 FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS</b>				
Paragraph 14	For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.	Introduction	No stakeholder has raised any issues in relation to these Protective Provisions.	
Paragraph 15	<p>In this Part of this Schedule—</p> <p>“the 2003 Act” means the Communications Act 2003(a);</p> <p>“electronic communications apparatus” has the same meaning as in the electronic communications code;</p> <p>“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(b);</p> <p>“electronic communications code network” means—</p> <p>(a) so much of an electronic communications network or infrastructure 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 (application of the electronic communications code) of the 2003 Act; and</p> <p>(b) an electronic communications network which the undertaker is providing or proposing to provide;</p> <p>“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;</p> <p>“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and</p> <p>“operator” means the operator of an electronic communications code network.</p>	Interpretation		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
Paragraph 16	The exercise of the powers conferred by article 36 (statutory undertakers) is subject to Part 10 (undertaker's works affecting electronic communications apparatus) to the electronic communications code.	Interpretation		
Paragraph 17	<p>(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—</p> <p>(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or</p> <p>(b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other reasonable expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.</p> <p>(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.</p> <p>(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.</p> <p>(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 50 (arbitration).</p>	Liability		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	<p>(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</p> <p>(b) any damages, or any interruptions, caused by electromagnetic interference arising from the construction or use of the authorised development.</p> <p>(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.</p>			
<b>PART 3 FOR THE PROTECTION OF HIGHWAYS AND TRAFFIC UNDERTAKERS</b>				
Paragraph 18	<p>(1) The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the relevant highway authority.</p> <p>(2) In this Part of this Schedule—</p> <p>“highway” means any highway of which the relevant highway authority is the highway authority;</p> <p>“plans” includes sections, designs, drawings, specifications, soil reports, staging proposals, programmes, calculations, methods of construction, risk assessments and details of the extent, timing and duration of any proposed occupation of any highway and</p> <p>“approved plans” means plans approved or deemed to be approved or settled by arbitration in accordance with the provisions of this Part of this Schedule;</p> <p>“property of the relevant highway authority” means any apparatus or street furniture of the relevant highway authority affixed to or placed under any highway; and</p>	Introduction and interpretation	Lincolnshire County Council is the local Highway Authority and has raised no issues with these Protective Provisions.	

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	<p>“the relevant highway authority” means the highway authority for the area in which the highway to which the provisions of this Part of this Schedule is situated.</p> <p>(3) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of the relevant highway authority, that approval or consent must be in writing and subject to such reasonable terms and conditions as the relevant highway authority may require.</p> <p>(4) In exercising the powers conferred by this Order in relation to any highway the undertaker must have regard to the potential disruption of traffic which may be caused and must seek to minimise such disruption so far as is reasonably practicable.</p> <p>(5) The undertaker must not, without the consent of the relevant highway authority, construct any part of the works authorised by this Order under and within 50 metres of the surface of any highway which comprises a carriageway except in accordance with plans submitted to, and approved by, the relevant highway authority; and if within 28 days after such plans have been submitted the relevant highway authority has not approved or disapproved them, it is deemed to have approved the plans as submitted.</p> <p>(6) In the construction of any part of the said works under a highway no part of it shall, except with the consent of the relevant highway authority, be so constructed as to interfere with the provision of proper means of drainage of the surface of the highway or be nearer than two metres to the surface of the highway.</p> <p>(7) The undertaker must not under the powers conferred by or under this Order without the consent of the relevant highway authority, acquire or enter upon, take or use whether temporarily or permanently or acquire any new rights over any part of any highway, including subsoil beneath the surface of any highway.</p>			

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
Paragraph 19	<p>(1) Before commencing the construction of, or the carrying out of any work which involves interference with a highway, the undertaker must submit to the relevant highway authority for its approval plans, drawings and particulars (in this paragraph referred to as “plans”) relating thereto, and the works must not be carried out except in accordance with the plans submitted to, and approved by, the relevant highway authority.</p> <p>(2) If within 28 days after the plans have been submitted the highway authority has not approved or disapproved them, it is deemed to have approved the plans as submitted.</p> <p>(3) Any officer of the relevant highway authority duly appointed for the purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the works authorised by this Order which—</p> <p>(a) is in, over or under any highway, or</p> <p>(b) which may affect any highway or any property of the relevant highway authority, during the carrying out of the work, and the undertaker must give to such officer all reasonable facilities for such inspection and, if the officer is of the opinion that the construction of the work is attended with danger to any highway or to any property of the relevant highway authority on or under any highway, the undertaker must adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway.</p>	Pre-commencement approval		
Paragraph 20	<p>(1) The undertaker must not alter, disturb or in any way interfere with any property of the relevant highway authority on or under any highway, or the access thereto, without the consent of the relevant highway authority, and any alteration, diversion, replacement or reconstruction of any such property which may be necessary may be made by the relevant highway authority or the undertaker as the relevant highway</p>	Consent for alteration, diversion, replacement or reconstruction		



dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	<p>authority thinks fit, and the expense reasonably incurred by the relevant highway authority in so doing must be repaid to the relevant highway authority by the undertaker. (2) If within 28 days after a request for consent has been submitted the relevant highway authority has not given or refused such consent, it is deemed to have consented to the request as submitted.</p>			
Paragraph 21	<p>The undertaker must not remove any soil or material from any highway except so much as must be excavated in the carrying out of the works authorised by this Order.</p>	Earth works		
Paragraph 22	<p>(1) If the relevant highway authority, after giving to the undertaker not less than 28 days' notice (or, in case of emergency, such notice as is reasonably practicable) of its intention to do so, incurs any additional expense in the signposting of traffic diversions, in the diversion of footpaths, in the taking of other measures in relation thereto, or in the repair of any highway by reason of the diversion thereto of traffic from a road of a higher standard, in consequence of the construction of the works authorised by this Order, the undertaker must repay to the relevant highway authority the amount of any such expense reasonably so incurred.</p> <p>(2) An amount which apart from this sub-paragraph would be payable to the relevant highway authority by virtue of this paragraph in respect of the repair of any highway must, if the highway fell or would have fallen due for repair as part of the maintenance programme of the relevant highway authority at any time within ten years of the repair being carried out by the undertaker, so as to confer on the relevant highway authority financial benefit (whether by securing the completion of overdue maintenance work for which the relevant highway authority is liable or by deferment of the time for such work in the ordinary course), be reduced by the amount which represents that benefit.</p>	Liability for diversions		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
Paragraph 23	<p>(1) The undertaker shall not, except with the consent of the relevant highway authority, deposit any soil or materials, or stand any plant, on or over any highway so as to obstruct or render less safe the use of the highway by any person, or, except with the like consent, deposit any soil or materials on any highway outside a hoarding, but if within 28 days after request for it any such consent is neither given nor refused it is deemed to have been given.</p> <p>(2) The expense reasonably incurred by the relevant highway authority in removing any soil or materials deposited on any highway in contravention of this paragraph must be repaid to the relevant highway authority by the undertaker.</p>	No obstruction of a highway		
Paragraph 24	The undertaker must not, except with the consent of the relevant highway authority, erect or retain on or over a highway to which the public continues to have access any scaffolding or other structure which obstructs the highway.	No obstruction of a highway		
Paragraph 25	The undertaker must, if reasonably so required by the relevant highway authority, provide and maintain to the reasonable satisfaction of the relevant highway authority, during such time as the undertaker may occupy any part of a highway for the purpose of the construction of any part of the works authorised by this Order, temporary bridges and temporary ramps for vehicular or pedestrian traffic over any part of the works or in such other position as may be necessary to prevent undue interference with the flow of traffic in the highway.	Maintaining highway		
Paragraph 26	(1) Where any part of any highway has been broken up or disturbed by the undertaker and not permanently stopped up or diverted, the undertaker must make good the subsoil, foundations and surface of that part of the highway to the reasonable satisfaction of the relevant highway authority, and must maintain the same to the reasonable satisfaction of the relevant highway authority for such time as may reasonably be required for the permanent reinstatement of the highway	Making good and reinstatement		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	(2) The reinstatement of that part of the highway must be carried out by the undertaker to the reasonable satisfaction of the relevant highway authority in accordance with such requirements as to specification of material and standards of workmanship as may be prescribed for equivalent reinstatement work by regulations made under section 71 of the New Roads and Street Works Act 1991(a).			
Paragraph 27	If any damage to any highway or any property of the relevant highway authority on or under any highway is caused by, or results from, the construction of any work authorised by this Order or any order or omission of the undertaker, its contractors, agents or employees whilst engaged upon such work, the undertaker may, in the case of damage to a highway, make good such damage to the reasonable satisfaction of the relevant highway authority and, where the undertaker does not make good, or in the case of damage to property of the relevant highway authority, the undertaker must make compensation to the relevant highway authority.	Compensation		
Paragraph 28	The fact that any act or thing may have been done in accordance with plans approved by the relevant highway authority does not (if it was not attributable to the act, neglect or default of the relevant highway authority or of any person in its employ or its contractors or agents) exonerate the undertaker from any liability, or affect any claim for damages, under this Part or otherwise.	Liability		
Paragraph 29	Any difference arising between the undertaker and the relevant highway authority under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) shall be resolved by arbitration under article 50 (arbitration).	Arbitration		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
<b>PART 4 FOR THE PROTECTION OF THE ENVIRONMENT AGENCY</b>				
Paragraph 30	The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the Applicant and the Agency.	Introduction	The Applicant and the Environment Agency (EA) are in discussions regarding the Protective Provisions. The EA agreed at a meeting on 23 September 2021 to provide a tracked change version of the protective provisions. The Applicant is yet to receive the tracked change protective provisions from the EA. The Applicant will update the Examining Authority once the parties have concluded their discussions on such.	
Paragraph 31	<p>In this Part of this Schedule—</p> <p>“the Agency” means the Environment Agency;</p> <p>“the Applicant” means the undertaker or any transferee under article 8 of this Order;</p> <p>“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” shall be construed accordingly;</p> <p>“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;</p> <p>“existing permit” means any environmental permits, whether granted before or after the coming into force of this Order, or otherwise granted over the Order limits;</p> <p>“the fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish; “main river” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the channel;</p> <p>“permitted activity” means any work or operation which requires an environmental permit for waste operation in accordance with the Environmental Permitting (England and Wales) Regulations 2016(a);</p>	Interpretation		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	<p>“plans” includes sections, drawings, specifications, calculations and method statements;</p> <p>“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to—</p> <p>(a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;</p> <p>(b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;</p> <p>(c) cause obstruction to the free passage of fish or damage to any fishery;</p> <p>(d) affect the conservation, distribution or use of water resources; or</p> <p>(e) affect the conservation value of the main river and habitats in its immediate vicinity;</p> <p>(f) “waste operation” means recovery or disposal of waste, which for the avoidance of doubt includes landfill; and</p> <p>“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.</p>			
Paragraph 32	<p>(1) Before beginning to construct any specified work, the Applicant must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.</p> <p>(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 42.</p> <p>(3) Any approval of the Agency required under this paragraph—</p> <p>(a) must not be unreasonably withheld or delayed;</p> <p>(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans or receipt of</p>	Pre-commencement approval		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	<p>further particulars if such particulars have been requested by the Agency for approval;</p> <p>(c) in the case of a refusal, accompanied by a statement of the grounds of refusal; and</p> <p>(d) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.</p> <p>(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).</p>			
Paragraph 33	<p>(1) Before beginning to construct a permitted activity, the Applicant must submit the following details to the Agency for approval—</p> <p>(a) such details as the Agency reasonably requires to grant consent for the permitted activity; and</p> <p>(b) such other reasonable requirements of the Agency as agreed between the parties.</p> <p>(2) The permitted activity must be carried out in accordance with the approval of the Agency.</p> <p>(3) As from the date on which the authorised development is commenced any conditions of an existing permit granted under the Environmental Permitting (England and Wales) Regulations 2016(a) (or any predecessor regulations or enactment) which relate to land within the Order limits or land adjacent to the Order limits cease to have effect to the extent they are inconsistent with the authorised development or, in respect of a permitted activity, an approval under sub-paragraph (1).</p> <p>(4) Any approval of the Agency required under this paragraph—</p> <p>(a) must not be unreasonably withheld or delayed;</p>	Detailed design		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	<p>(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and</p> <p>(c) in the case of a refusal, must be accompanied by a statement of the grounds of refusal.</p> <p>(5) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (4)(b).</p>			
Paragraph 34	<p>Without limiting paragraph 32, the requirements which the Agency may have under that paragraph include conditions requiring the Applicant, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—</p> <p>(a) to safeguard any drainage work against damage; or</p> <p>(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of any specified work.</p>	Protective works		
Paragraph 35	<p>(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 34, must be constructed—</p> <p>(a) without unreasonable delay in accordance with the plans approved under this Schedule; and</p> <p>(b) to the reasonable satisfaction of the Agency, and the Agency shall be entitled by its officer to watch and inspect the construction of such works.</p> <p>(2) The Applicant must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.</p>	Protective works		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	<p>(3) If the Agency reasonably requires, the Applicant must construct all or part of the protective works so that they are in place prior to the construction of any specified work.</p> <p>(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the Applicant at the Applicant's own expense to comply with the requirements of this part of this Schedule or (if the Applicant so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.</p> <p>(5) Subject to sub-paragraph (6) and paragraph 40, if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (4) is served upon the Applicant, the Applicant has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by the Agency in so doing shall be recoverable from the Applicant.</p> <p>(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 42.</p>			
Paragraph 36	(1) Subject to sub-paragraph (5) the Applicant must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the Applicant for the purposes of	Drainage works		



dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	<p>or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.</p> <p>(2) If any such drainage work which the Applicant is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Applicant to repair the drainage work, or any part of such drainage work, or (if the Applicant so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.</p> <p>(3) Subject to sub-paragraph (4) and paragraph 40, if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the Applicant, the Applicant has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is reasonably necessary for such compliance and any expenditure reasonably incurred by the Agency in so doing shall be recoverable from the Applicant.</p> <p>(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency shall not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 42.</p> <p>(5) This paragraph does not apply to—</p> <p>(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and</p> <p>(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.</p>			

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
Paragraph 37	Subject to paragraph 40, if by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the Applicant to the reasonable satisfaction of the Agency and if the Applicant fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the Applicant.	Drainage works		
Paragraph 38	If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the Applicant must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction as soon as reasonably practicable of the Applicant becoming aware of such obstruction.	Flood defences		
Paragraph 39	<p>(1) The Applicant must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.</p> <p>(2) If by reason of—</p> <p>(a) the construction of any specified work; or</p> <p>(b) the failure of any such work, damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the Applicant requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.</p> <p>(3) Subject to paragraph 40, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected</p>	Fish movements		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	<p>damage to a fishery, the Applicant fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure reasonably incurred by the Agency in so doing shall be recoverable from the Applicant.</p> <p>(4) Subject to paragraph 40, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Applicant any expenditure incurred in so doing provided that notice specifying those steps is served on the Applicant as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.</p>			
Paragraph 40	<p>The Applicant must make reasonable compensation to the Agency in respect of all direct costs, charges and expenses which the Agency may reasonably incur —</p> <p>(a) in the examination or approval of plans under this Part of this Schedule;</p> <p>(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and</p> <p>(c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.</p> <p>(2) Prior to granting approval under paragraphs 33 and 34, Agency shall inform the Applicant of the costs it expects to reasonably incur in granting approval.</p>	Compensation		
Paragraph 41	<p>The Applicant is responsible for and shall make reasonable compensation to the Agency for all costs and direct losses not otherwise provided for in this Part of this Schedule which may be reasonably incurred or suffered by the Agency by reason of—</p>	Compensation and liability		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	<p>(a) the construction of any specified works comprised within the authorised works; or</p> <p>(b) any act or omission of the Applicant, its employees, contractors or agents or others whilst engaged upon the construction of the authorised works.</p> <p>(2) For the avoidance of doubt, in sub-paragraph (1)— “costs” includes reasonably incurred—</p> <p>(a) expenses and charges;</p> <p>(b) staff costs and overheads;</p> <p>(c) legal costs; and “losses” includes physical damage.</p> <p>(3) The Agency must give to the Applicant reasonable notice of any such claim or demand and no settlement or compromise shall be made without the agreement of the Applicant which agreement shall not be unreasonably withheld or delayed.</p> <p>(4) The fact that any work or thing has been executed or done by the Applicant in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the Applicant from any liability under the provisions of this Part of this Schedule.</p>			
Paragraph 42	Any dispute arising between the Applicant and the Agency under this part of this Schedule must, if the parties agree, be determined by arbitration under article 50 (arbitration), but must otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Transport or its successor acting jointly on a reference to them by the Applicant or the Agency, after notice in writing by one to the other.	Arbitration		
<b>PART 5 FOR THE PROTECTION OF DRAINAGE AUTHORITIES</b>				

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
Paragraph 43	The provisions of this Part have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.	Introduction	The Black Sluice Internal Drainage Board is the Drainage Authority, and the Applicant has confirmed to them that Protective Provisions in their favour are included in the draft DCO.	
Paragraph 44	<p>In this Part of this Schedule—</p> <p>“construction includes execution, placing, altering, replacing, relaying and removal; and “construct” and “constructed” must be construed accordingly;</p> <p>“drainage authority” means in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(a);</p> <p>“drainage work” means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse which is the responsibility of the drainage authority;</p> <p>“ordinary watercourse” has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;</p> <p>“plans” includes any information reasonably required by the drainage authority including location details, grid references, sections, drawings, specifications, assessments and method statements;</p> <p>“specified work” means any of the following works carried out in relation to any ordinary watercourse—</p> <p>(a) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;</p> <p>(b) the construction or alteration of a bridge or other structure;</p> <p>(c) erecting a culvert in the watercourse; or</p> <p>(d) altering a culvert in a manner that would be likely to affect the flow of the watercourse.</p>	Interpretation		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
Paragraph 45	<p>(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 14 days of the submission of the plans reasonably request.</p> <p>(2) The undertaker must not commence construction of the specified work until approval, unconditionally or conditionally, has been given as provided in this paragraph.</p> <p>(3) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 53.</p> <p>(4) Any approval of the drainage authority required under this paragraph—</p> <p>(a) must not be unreasonably withheld or delayed;</p> <p>(b) is deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and</p> <p>(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work, ordinary watercourse or for the prevention of flooding.</p> <p>(5) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.</p>	Pre-commencement approval		
Paragraph 46	Without limiting paragraph 45, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of	Protective works		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	<p>existing banks, walls or embankments) as are reasonably necessary—</p> <p>(a) to safeguard any drainage work against damage by reason of any specified work; or</p> <p>(b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased, by reason of any specified work.</p>			
Paragraph 47	<p>(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 4, must be constructed—</p> <p>(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and</p> <p>(b) to the reasonable satisfaction of the drainage authority, and an officer of the drainage authority is entitled to watch and inspect the construction of such works at all reasonable times and on reasonable notice.</p> <p>(2) The undertaker must give to the drainage authority—</p> <p>(a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and</p> <p>(b) notice in writing of its completion not later than 7 days after the date of completion.</p> <p>(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work to which the protective works relate.</p> <p>(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply</p>	Protective works		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	<p>with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is agreed, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.</p> <p>(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any reasonable expenditure incurred by it in so doing is recoverable from the undertaker.</p> <p>(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 53.</p>			
Paragraph 48	<p>(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of the specified work until the date falling 12 months from the date of completion of the specified work maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation on land held by the undertaker for the purpose of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.</p> <p>(2) If any drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the</p>	Drainage works		



dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	<p>drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of the work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.</p> <p>(3) Subject to sub-paragraph (4) and paragraphs 50 and 51 if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is reasonably necessary for such compliance and may recover any reasonable expenditure reasonably incurred by it in so doing from the undertaker.</p> <p>(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 53.</p> <p>(5) This paragraph does not apply to—</p> <p>(a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and</p> <p>(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.</p>			

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
Paragraph 49	Subject to paragraphs 50 and 51 and sub-paragraph 48(5)(b), if, by reason of the construction of a specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.	Drainage works		
Paragraph 50	The undertaker must make reasonable compensation for costs, charges and expenses which the drainage authority may reasonably incur in— (a) the examination or approval of plans under this Part of this Schedule; and (b) inspecting the construction of the specified work or any protective works required by the drainage authority under this Part of this Schedule; and (c) subject at all times to receiving the prior written approval of the undertaker, in carrying out any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified work.	Compensation		
Paragraph 51	(1) Without limiting the other provisions of this Part, the undertaker must make reasonable compensation to the drainage authority from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of— (a) any damage to any drainage work;			

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
	<p>(b) any raising or lowering of the water table in land adjoining the authorised project or any sewers, drains and watercourses; or</p> <p>(c) any flooding or increased flooding of any such lands, caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the specified work.</p> <p>(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.</p> <p>(3) The fact that any act or thing may have been done by the drainage authority on behalf of the undertaker or in accordance with a plan approved or deemed to have been approved by the drainage authority or in accordance with any requirement of the drainage authority or under its supervision does not, subject to sub-paragraph (4), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the drainage authority fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.</p> <p>(4) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or loss to the extent that it is attributable to the act, neglect or default of the drainage authority, its officers, servants, contractors or agents.</p>			
Paragraph 52	The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority or to its satisfaction does not (in the absence of negligence on the part of the drainage authority, its officers, contractors or agents), relieve the undertaker from any liability under this Part.	Liability		

dDCO reference (Schedule 8)	Protective Provision	Summary	Progress status	Outstanding issues
Paragraph 53	Any dispute arising between the undertaker and the drainage authority under this Part is to be determined by arbitration under article 50 (arbitration).	Arbitration		