

YG-DCO-143

# Yorkshire Green Energy Enablement (GREEN) Project

**Volume 8**

**Document 8.30.4 Proposed Protective Provisions to benefit Northern Gas Networks**

**Final Issue A  
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## Version History

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Document	Version	Status	Description / Changes
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28/07/2023	A	Final	First Issue
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# 1. About this document

## 1.1 Introduction

- 1.1.1 Action Point 20 arising from Compulsory Acquisition Hearing 2, The Examining Authority (ExA) requested that National Grid Electricity Transmission (National Grid) (the Applicant) provide precise drafting differences between its proposed protective provision drafting and the preferred wording of relevant statutory undertakers.
- 1.1.2 The Applicant had included standard protective provisions for the benefit of gas undertakers including Northern Gas Networks (NGN) in its **draft DCO (Document 3.1(D)) [REP5-004]**, but NGN have requested that their own bespoke provisions are to be used. National Grid have now included bespoke protective provisions for the benefit of NGN at Part 8 of Schedule 15 to the **draft DCO (Document 3.1(E))** submitted at Deadline 6. To the extent that points of difference remain between the parties at Deadline 6, this has been set out in Table 2.1.
- 1.1.3 Table 2.1 sets out a comparison of the NGN preferred protective provision wording against the National Grid proposed wording, together with an explanation for each difference in drafting. The table sets out the following columns:
- Column 1 establishes the relevant paragraph number and title;
  - Column 2 shows an extract of the clean protective provisions which have been included on the face of the **draft DCO (Document 3.1(E))** at Deadline 6 and reflect National Grid's position;
  - Column 3 sets out an explanation of the justification for National Grid's approach;
  - Column 4 shows the change in drafting desired by NGN in red track changes in the instances required; and
  - Column 5 sets out the NGN justification for their proposed updated drafting based on submissions made at Deadline 5.
- 1.1.4 Due to the narrow timescales associated with Deadline 6, NGN have not been able to input into this document ahead of submission. Therefore, column 5 of Table 2.1 below reflects the position NGN presented in Table 5.2 of the **Statement of Common Ground between National Grid Electricity Transmission plc and Northern Gas Networks Limited (Document 8.5.20(B)) [REP5-067]**.

## 1.2 National Grid overview of position

- 1.2.1 As a promoter of a nationally significant infrastructure project (NSIP), National Grid appreciates its obligation to ensure that statutory undertakers are protected through the provision of protective provisions appropriate to each statutory undertaker's undertaking. However, as a statutory undertaker in their own right, with a regulated obligation to act in the best interests of the electricity consumer, National Grid needs to ensure that the provisions entered into within Schedule 15 of the **draft DCO (Document 3.1(E))** are fully justifiable, will not unduly inhibit delivery of this critical infrastructure and

do not apply an unreasonable cost burden which will be ultimately borne by the consumer.

- 1.2.2 National Grid has, therefore, sought to take a pragmatic approach which sufficiently protects each respective statutory undertaker from serious detriment, whilst ensuring the Project is delivered in the public best interest. This is the basis upon which the more specific drafting justifications set out below are justified.

## 2. Proposed Protective Provisions to benefit Northern Gas Networks

Table 2.1 – Summary of proposed changes to the Protective Provisions in favour of Northern Gas Networks

Paragraph number	Clean extract from Part 8 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6	National Grid's Justification for drafting of provision	Statutory Undertaker proposed changes shown in tracks	Statutory Undertaker's justification for proposed change
1. Application	For the protection of the Statutory undertaker the following provisions shall, unless otherwise agreed in writing between the Undertaker and the Statutory undertaker, have effect.	Provision is agreed.	No proposed changes.	Provision is agreed.
2. Interpretation	In 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 to fulfil its statutory functions in a manner no less efficient than previously; “commence” has the same meaning as in Schedule 3 of the Order;	Provision is agreed.	No proposed changes.	Provision is agreed.

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	<p>“functions” includes powers and duties;</p> <p>“in” in a context referring to Works, apparatus or alternative apparatus in land includes a reference to such Works, apparatus or alternative apparatus under, over, across, along or upon such land;</p> <p>“maintain” and “maintenance” shall include the ability and right to do any of the following: construct, use, repair, alter, inspect, renew or remove;</p> <p>“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;</p>			
3. General	3. Except for paragraphs 4 ( <i>apparatus of Statutory undertaker in stopped up streets</i> ), 8 ( <i>retained apparatus: protection</i> ), 9 ( <i>expenses</i> ) and 10 ( <i>indemnity</i> ), this Schedule does not apply to apparatus in respect of which the relations between the Undertaker	Provision is agreed.	No proposed changes.	Provision is agreed.



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	and the Statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.			
4. Apparatus of Statutory undertaker in stopped up streets	(1) Where any street is temporarily stopped up or diverted under the powers of the relevant article of the Order (article [14 (temporary stopping up of streets, cycle tracks and public rights of way) of the Draft Order), the Statutory undertaker shall be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway, subject always to the Undertaker's unimpeded ability to carry out the Works.	Provision is agreed.	No proposed changes.	Provision is agreed.
5. Acquisition of land	Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference to the Order, the Undertaker shall not acquire any apparatus owned by the Statutory Undertaker or override any	The clause should not fetter National Grid's ability to acquire apparatus, easements or other interest owned by other statutory undertakers.	Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference to the Order, the Undertaker shall not acquire any apparatus <del>owned by the Statutory undertaker</del> or override any easement	Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference to the

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	<p>easement or other interest of the Statutory undertaker otherwise than by agreement.</p>		<p>or other interest of the Statutory undertaker otherwise than by agreement.</p>	<p>Order, the Undertaker shall not acquire any apparatus or override any easement or other interest of the Statutory undertaker otherwise than by agreement.</p>
<p>6. Removal of diversion of apparatus</p>	<p>(1) If the Undertaker acquires any interest in land in which the Statutory undertaker's apparatus is placed, that apparatus shall not be removed and any right of a Statutory undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the Statutory undertaker provided that the Statutory undertaker shall use all reasonable endeavours to construct and install such alternative apparatus as soon as reasonably practicable.</p> <p>(2) If, for the purpose of executing any Works, the Undertaker requires the removal</p>	<p>National Grid require assurance that Northern Gas Networks will provide approval within 28 days to ensure the Project moves in accordance with its tight schedule.</p> <p>The Project needs to be delivered by 2027. Any delay could have potential implications on this. This provision has the potential to hinder progress of the Project and so, if any diversion is necessary, the alternative apparatus must be installed as soon as possible to minimise that disruption.</p>	<p>(1) If the Undertaker acquires any interest in land in which the Statutory undertaker's apparatus is placed, that apparatus shall not be removed and any right of a Statutory undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the Statutory undertaker <del>provided that the Statutory undertaker shall use all reasonable endeavours to construct and install such alternative apparatus as soon as reasonably practicable.</del></p> <p>(2) If, for the purpose of executing any Works, the Undertaker requires</p>	<p>These timescales are too short.</p>

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	<p>or diversion of any apparatus, it shall give to the Statutory undertaker written notice of that requirement, together with a plan of the Works and the removal or diversion works proposed, the proposed position of the alternative apparatus, and the proposed timeline for the works. The Statutory undertaker shall reasonably approve these details within 28 days of receipt of such plan. The Undertaker shall afford to the Statutory undertaker to their reasonable satisfaction the necessary facilities and rights for:</p> <p>(a) the construction of alternative apparatus in other land either within the order land or otherwise; and</p> <p>(b) the maintenance of that apparatus</p> <p>and the Statutory undertaker shall complete the works using its reasonable endeavours to meet the Undertaker's proposed timeline, and in any event without undue delay, in accordance with the details provided by the Undertaker under</p>	<p>For similar reasons, where Northern Gas Networks approval is necessary for National Grid's plans for any diversion, that approval (or not) will need to be provided within a fixed timeframe.</p> <p>Where Northern Gas Networks seek to recover the associated costs from National Grid, it is reasonable that those costs should first be approved by National Grid.</p>	<p>the removal or diversion of any apparatus, it shall give to the Statutory undertaker written notice of that requirement, together with a plan of the Works and the removal or diversion works proposed, the proposed position of the alternative apparatus, and the proposed timeline for the works. The Statutory undertaker shall reasonably approve these details <del>within 28 days of receipt of such plan</del>. The Undertaker shall afford to the Statutory undertaker to their reasonable satisfaction the necessary facilities and rights for:</p> <p>...</p> <p>(8) Paragraphs 9 (Expenses) and 10 (Indemnity) of this Schedule apply to removal or diversions works under this paragraph 6, but the Statutory undertaker must provide to the Undertaker a reasonable cost estimate for works that it proposes to carry out <del>for the Undertaker's approval</del>.</p>	

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	<p>this sub-paragraph or as otherwise reasonably agreed by the Undertaker.</p> <p>(3) If, in consequence of the Works carried out by the Undertaker, the Statutory undertaker reasonably needs to remove or divert any of its apparatus, it shall without undue delay give the Undertaker written notice of that requirement, together with a plan of the work proposed, the proposed position of the alternative apparatus and the proposed timeline for the works. The Undertaker shall reasonably approve these details and shall afford to the Statutory undertaker to their reasonable satisfaction the necessary facilities and rights for</p> <p>(a) the construction of alternative apparatus; and</p> <p>(b) the maintenance of that apparatus</p> <p>and the Statutory undertaker shall complete the works without undue delay and in accordance with the approved details. If agreement cannot be reached the</p>			

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	<p>Statutory Undertaker reserves the right to terminate the Deed with immediate effect without liability.</p> <p>(4) NOT USED</p> <p>(5) NOT USED</p> <p>(6) NOT USED</p> <p>(7) 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-paragraphs (2) and (3), the Statutory undertaker shall, on receipt of a written notice to that effect from the Undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, but this obligation shall not require the Statutory undertaker to use its compulsory purchase powers unless it elects to so do.</p> <p>(8) Paragraphs 9 (Expenses) and 10 (Indemnity) of this Schedule apply to removal or diversions</p>			



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	works under this paragraph 6, but the Statutory undertaker must provide to the Undertaker a reasonable cost estimate for works that it proposes to carry out for the Undertaker's approval.			
7. Facilities and rights for alternative apparatus	<p>(1) Where, in accordance with the provisions of this Schedule, the Undertaker affords to the Statutory undertaker facilities and rights for the construction and maintenance in the Undertaker's land of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Undertaker and the Statutory undertaker and shall be no less favourable on the whole to the Statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, unless otherwise reasonably agreed.</p> <p>(2) If the facilities and rights to be afforded by the Undertaker in respect of any alternative apparatus in the Undertaker's land are less favourable on the</p>	Provision is agreed.	No proposed changes.	Provision is agreed.

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	<p>whole to the Statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, then the Undertaker and the Statutory undertaker shall agree appropriate compensation for the extent to which the new facilities and rights render the Statutory undertaker less able to effectively carry out its undertaking or require it to do so at greater cost. If the amount of compensation cannot be agreed, then either the Undertaker or the Statutory undertaker may refer the matter to arbitration as per article 53 (arbitration) of the Draft Order.</p>			
8. Retained apparatus: protection	<p>(1) Not less than 28 days before commencing the execution of any Works that will or may affect any apparatus, the removal or diversion of which has not been required by the Undertaker under paragraph 6(2) or otherwise or by the Statutory undertaker under paragraph 6(3), the Undertaker shall submit to the Statutory undertaker in question a plan showing the Works and the</p>	<p><u>Review of Plans</u> National Grid are requesting for all plans to be reviewed within <b>28 days</b>, this is required to ensure the Project moves promptly in accordance with its tight timeframes.</p> <p><u>15m specification:</u></p>	<p>(1) Not less than <del>28</del> 56 days before commencing the execution of any Works that will or may affect any apparatus, the removal or diversion of which has not been required by the Undertaker under paragraph 6(2) or otherwise or by the Statutory undertaker under paragraph 6(3), the Undertaker shall submit to the Statutory undertaker in question a plan showing the Works and the</p>	<p>Northern Gas Networks are requesting for all plans to be reviewed within 56 days, they also wish to remove the distance limit in terms of updating drawings and plans of any affected apparatus.</p>

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	<p>apparatus.</p> <p>(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the Statutory undertaker under sub-paragraph (1) shall be detailed including a method statement and describing—</p> <p>(a) the exact position of the Works;</p> <p>(b) the level at which these are proposed to be constructed or renewed;</p> <p>(c) the manner of their construction or renewal including details of excavation, positioning of plant etc;</p> <p>(d) the position of all apparatus; and</p> <p>(e) by way of detailed drawings, every alteration proposed to be made close to (within 15 metres of)-any</p>	<p>The term 'close to' without any clear specification of what distance this covers gives scope for uncertainty of what the detailed drawings will need to contain. 15m is a standard distance and is outlined earlier in the paragraph. Therefore, the specification serves to carry through this agreed 15m principle to the scope of the drawings themselves.</p>	<p>apparatus.</p> <p>...</p> <p>(2)(1)(e) by way of detailed drawings, every alteration proposed to be made close to <del>(within 15 metres of)</del>-any apparatus.</p> <p>...</p> <p>(7)(c) if a subsidence mitigation scheme is required, it shall be carried out as approved <del>by the Statutory undertaker</del> (such approval not to be unreasonably withheld or delayed).</p> <p>...</p> <p>(8) Nothing in this paragraph shall preclude the Undertaker from submitting at any time or from time to time, but in no case less than <del>56</del> <b>28</b> days before commencing the execution of the relevant Works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.</p>	

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	<p>apparatus.</p> <p>(3) The Undertaker shall not commence the construction or renewal of any works to which sub-paragraphs (1) or (2) apply until the Statutory undertaker has given written approval of the plan so submitted.</p> <p>(4) Any approval of the Statutory undertaker required under sub-paragraph (3)—</p> <p>(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and</p> <p>(b) shall not be unreasonably withheld or delayed.</p> <p>(5) In relation to works to which sub-paragraph (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.</p> <p>(6) Works executed under the</p>			

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	<p>Order to which this paragraph 8 applies shall be executed only in accordance with the relevant plan, notified under sub-paragraph (1) and approved (with conditions, if applicable) under sub-paragraph (4), as amended from time to time by agreement between the Undertaker and the Statutory undertaker. The Statutory undertaker shall be entitled to watch and inspect the execution of those Works.</p> <p>(7) Where the Statutory undertaker requires any protective works or subsidence monitoring to be carried out either by itself or by the Undertaker (whether of a temporary or permanent nature), the Statutory undertaker shall give the Undertaker notice of such requirement in its approval under sub-paragraph (3), and</p> <p>(a) such protective works shall be carried out to the Statutory undertakers' reasonable satisfaction prior to the carrying out of the relevant part of the Works;</p>			



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	<p>(b) ground subsidence monitoring shall be carried out in accordance with a scheme approved by the Statutory undertaker (such approval not to be unreasonably withheld or delayed), which shall set out:</p> <ul style="list-style-type: none"> <li>(i) the apparatus which is to be subject to such monitoring;</li> <li>(ii) the extent of land to be monitored;</li> <li>(iii) the manner in which ground levels are to be monitored;</li> <li>(iv) the timescales of any monitoring activities; and</li> <li>(v) the extent of ground subsidence which, if exceeded, shall require the Undertaker to submit for the Statutory undertaker's approval a ground subsidence mitigation scheme in respect of such subsidence;</li> </ul> <p>(c) if a subsidence mitigation scheme is required, it shall be carried out as approved by the Statutory undertaker (such approval not to be unreasonably withheld or delayed).</p> <p>(8) Nothing in this paragraph</p>			

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	<p>shall preclude the Undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of the relevant Works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.</p> <p>(9) The Undertaker shall not be required to comply with sub-paragraphs (1) or (2) 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 notice as soon as is reasonably practicable and a plan of those works shall comply with the other requirements in this paragraph insofar as is reasonably practicable in the circumstances, provided that it always complies with sub-paragraph (10).</p> <p>(10) At all times when carrying out any works authorised under the Order that may or will affect the apparatus, the Undertaker shall comply with the Statutory</p>			

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	<p>undertaker's policies for safe working in proximity to gas apparatus including the “Specification for safe working in the vicinity of Northern Gas Networks, Gas pipelines and associated installation requirements for third parties “NGN/SPSSW22” and the Health and Safety Executive guidance document “HS(G)47 Avoiding Danger from underground services”.</p>			
9. Expenses	<p>(1) Subject to the following provisions of this paragraph, the Undertaker shall repay to the Statutory undertaker as soon as reasonably practicable all charges, costs and expenses reasonably and properly incurred by the Statutory undertaker in, or in connection with, the inspection, removal or diversion, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be reasonably required and necessary in consequence of the execution of the Works,</p>	<p>NGN have requested that payment be made within 7 days. However, due to the time required for National Grid to process payments this is unrealistic. National Grid will endeavour to pay these as soon as practicable, which is a reasonable position. The standard payment term for National Grid is 42 days.</p>	<p>(1) Subject to the following provisions of this paragraph, the Undertaker shall repay to the Statutory undertaker <del>as soon as reasonably practicable within seven</del> (7) days of demand all charges, costs and expenses reasonably <del>and properly</del> incurred by the Statutory undertaker in, or in connection with, the inspection, removal or diversion, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be reasonably required and necessary in consequence of the execution of the Works, including without</p>	<p>Northern Gas Networks will review and respond in the next draft</p>

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	<p>including without limitation—</p> <p>(a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus, including without limitation in the event that the Statutory undertaker elects to use compulsory purchase powers to acquire any necessary rights under 6(7);</p> <p>(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;</p> <p>(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;</p> <p>(d) the approval of plans;</p> <p>(e) the carrying out of protective works;</p> <p>(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</p>		<p>limitation—</p>	

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	<p>any works carried out pursuant to this Schedule; and</p> <p>(g) any statutory loss of supply payments under the 'Guaranteed Standards of Service' regime that the Statutory undertaker may incur in consequence of the works, but in the event that such payments are likely to become payable, the Statutory undertaker shall give the Undertaker notice as soon as reasonably practicable of the payments and the likely amount.</p> <p>(2) The Statutory undertaker shall use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any expenses capable of being claimed under sub-paragraph (1). If requested to do so by the Undertaker, the Statutory undertaker shall provide an explanation of how the claimed expenses have been minimised. The Undertaker shall only be liable to pay expenses that have been reasonably incurred.</p> <p>(3) There shall be deducted from any sum payable under sub-</p>			



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	<p>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 and not including the costs (if any) of disposing that apparatus.</p> <p>(4) If in accordance with the provisions of this part of this Schedule—</p> <p>(a) apparatus of greater capacity or of greater dimensions is placed in substitution for existing apparatus; 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,</p> <p>then, if this incurs greater expense than would have been incurred by a like-for-like (or as close as practicable to like-for-like) replacement at the same depth, the Undertaker shall not be liable for this additional expense.</p> <p>(5) For the purposes of subparagraph (4)—</p>			

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	(a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus.			
10. Indemnity	(1) Subject to sub-paragraphs (2), (3) and (4), and without detracting from paragraph 9 above, if by reason or in consequence of the construction of any works carried out under this Schedule or in consequence of the construction, use, maintenance or failure of any of the Works by or on behalf of the Undertaker or in consequence of any act or default of the Undertaker (or any person employed or authorised by him) in the course of carrying out such works, including 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	<p><u>Indemnity</u></p> <p>National Grid cannot be responsible for damages caused by omission. They should not be required to pay for costs or damages caused by or in consequence of Northern Gas Network's error.</p> <p>National Grid require a proportionate and reasonable indemnity provision in line with the nature of the works and level of risk being undertaking on or near Northern Gas Networks infrastructure.</p> <p>National Grid cannot accept uncapped</p>	<p>...</p> <p>(2) The fact that any act or thing may have been done by the Statutory undertaker on behalf of the Undertaker or in accordance with a plan approved by the Statutory undertaker or in accordance with any requirement of the Statutory undertaker or under its supervision shall not (subject to sub-paragraph (4)), excuse the Undertaker from liability under the provisions of this sub-paragraph (1) <del>unless caused by an act or omission of the Statutory undertaker.</del></p> <p>...</p> <p><del>(6) Any liability under paragraph 10(1) shall be limited to a maximum aggregate liability of the Undertaker to the Statutory undertaker for all claims under this Part to a sum of £10,000,000.00 (ten million pounds sterling)</del></p>	Northern Gas Networks do not as standard agree to liability caps in Protective Provisions and this challenge was not raised in previous iterations

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	<p>property of the Statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the Statutory undertaker, or the Statutory undertaker becomes liable to pay any amount to any third party, the Undertaker shall—</p> <p>(a) indemnify the Statutory undertaker any costs reasonably incurred by the Statutory undertaker in making good such damage or restoring the supply; and</p> <p>(b) indemnify the Statutory undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs (save to the extent that the same arises due to the sole, or complete act, neglect or default of the Statutory undertaker) incurred by or recovered from the Statutory undertaker.</p> <p>(2) The fact that any act or thing may have been done by the Statutory undertaker on behalf of the Undertaker or in accordance</p>	<p>indemnity without full justification.</p> <p>National Grid believe that a liability cap of £10million should be adequate protection for the scale and potential impacts upon NGN's assets and should be considered acceptable and proportionate.</p>		

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	<p>with a plan approved by the Statutory undertaker or in accordance with any requirement of the Statutory undertaker or under its supervision shall not (subject to sub-paragraph (4)), excuse the Undertaker from liability under the provisions of this sub-paragraph (1) unless caused by an act or omission of the Statutory undertaker.</p> <p>(3) The Statutory undertaker shall use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any costs, expenses, loss, demands, penalties etc. capable of being claimed under sub-paragraph (1). If requested to do so by the Undertaker, the Statutory undertaker shall provide an explanation of how the claimed expenses have been minimised. The Undertaker shall only be liable to pay expenses that have been reasonably incurred.</p> <p>(4) Nothing in sub-paragraphs (1) or (2) shall impose any liability on the Undertaker with respect to any damage or interruption to the extent that it is attributable to the</p>			

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	<p>neglect or default of the Statutory undertaker, its officers, servants, contractors or agents.</p> <p>(5) The Statutory undertaker shall give the Undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the Undertaker and considering their promptly made representations to the extent practicable.</p> <p>(6) Any liability under paragraph 10(1) shall be limited to a maximum aggregate liability of the Undertaker to the Statutory undertaker for all claims under this Part to a sum of £10,000,000.00 (ten million pounds sterling)</p>			
11. Enactments and agreements	Nothing in this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the Undertaker and the Statutory undertaker in respect of any apparatus laid or erected in land belonging to the Undertaker.	Provision is agreed.	No proposed changes.	Provision is agreed.
12. Co-operation	Where in consequence of the	Provision is agreed.	No proposed changes.	Provision is agreed.

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	<p>proposed construction of any of the Works the Undertaker or the Statutory undertaker requires the removal of apparatus in accordance with the provisions of these Protective Provisions, each party shall use all reasonable endeavours to co-ordinate the execution of such works in the interests of safety and the efficient and economic execution of such works, taking into account the absolute need to ensure the safe and efficient operation of the Statutory undertaker's undertaking and its apparatus and the safe and efficient operation of the Undertaker's apparatus.</p>			
13. Access	<p>If in consequence of the powers granted under the Order, the access to any apparatus is materially obstructed, the Undertaker shall provide such alternative means of access to such apparatus as will enable the Statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.</p>	Provision is agreed.	No proposed changes.	Provision is agreed.

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14. Arbitration	Any difference or dispute arising between the Undertaker and the Statutory undertaker under this Schedule shall, unless otherwise agreed in writing between the Undertaker and that Statutory undertaker, be determined by arbitration in accordance with the relevant article of the Order	Provision is agreed.	No proposed changes.	Provision is agreed.
15. Works falling outside of the development authorised by the Order	Nothing in this schedule shall require the Undertaker to carry out works, or require the Undertaker to enable the Statutory undertaker to carry out works, that are not authorised by the Order. The Statutory undertaker shall not request any alteration, diversion, protective work or any other work which is not authorised to be carried out under the Order (but for the avoidance of doubt, it may elect to carry out such works itself under any other planning permission, permitted development rights or statutory powers (including those of compulsory acquisition) available to it).	Provision is agreed.	No proposed changes.	Provision is agreed.



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16. Cathodic protection testing	<p>Where in the reasonable opinion of either party:</p> <p>(a) the Authorised Development might interfere with the existing cathodic protection forming part of the apparatus; or</p> <p>(b) the apparatus might interfere with the proposed or existing cathodic protection forming part of the Authorised Development;</p> <p>the parties shall co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.</p>	Provision is agreed.	No proposed changes.	Provision is agreed.

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