

## The Diversion Provisions<sup>13</sup>

### • 1

#### Definitions

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○ In this Schedule the following expressions shall have the following meanings:

##### ○ 1.1

'Applicable Plan'

○ [(in England) means any document forming part of the development plan (as defined in [Section 38](#) of the Planning and Compulsory Purchase Act 2004) following adoption and/or issue by the local planning authority or (as the case may be) the Regional Planning Body or the Mayor of London except to the extent that a policy (being a relevant plan or local provision) of a unitary development plan or structure plan or local plan remains in force by virtue of any of the provisions of [Schedule 8](#) of the Planning and Compulsory Purchase Act 2004 and in such circumstances 'Applicable Plan' shall mean the unitary development plan, the structure plan or as the case may be the local plan

○ (or) (in Wales)

○ means a local development plan for the purposes of [Section 78](#) of the Planning and Compulsory Purchase Act 2004 or (where still in force) a unitary development plan for the purposes of [Part II](#) of the Town and Country Planning Act 1990]<sup>14</sup>

[1317]

##### ○ 1.2

'Area' means the local planning authority area in which the Described Land or any part of it is situated for the purposes of the Planning Act

##### ○ 1.3

'Development' shall have the meaning assigned to it in Section 55<sup>15</sup> of the Planning Act save that it shall not include:

##### ○

##### ▪ 1.3.1

the construction of roads or motorways or

##### ▪ 1.3.2

the installation of any pipe-lines, cables or public services or

##### ▪ 1.3.3

the development of land under government order for the purpose of a new town or urban development

##### ○ 1.4

'Diversion Route' means the route to be agreed or determined in accordance with Paragraph 3 of this Schedule

##### ○ 1.5

'Planning Permission' shall have the meaning assigned to it by Section 336 of the Planning Act

##### ○ 1.6

'Relevant Plan Provision' means a policy or provision contained in an Applicable Plan to the effect that no Development shall be carried out in some part of the Area where either:

##### ○

##### ▪ 1.6.1

such policy or provision is expressly included solely for the protection of the pipe-line or

##### ▪ 1.6.2

the decision to apply the policy or provision to that part of the Area was made solely by reason of the position of the pipe-line

▪ [1318]

- 2

- Activation of diversion provisions<sup>16</sup>

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- 2.1

If the Transferor desires to carry out any Development on or of the Described Land he will:

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- 2.1.1

supply to the Transferee full details of it in writing and

- 2.1.2

use his best endeavours with the assistance if requested of the Transferee free of charge to arrange the Development so as to avoid the diversion of the pipe-line and will consult with the Transferee to this end

- 2.2

If following such consultations:

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- 2.2.1

the Transferor obtains Planning Permission for Development but the same is prevented solely by reason of the position of the pipe-line or the Transferor's obligations under this transfer or

- 2.2.2

Planning Permission for the Development is refused solely by reason of the position of the pipe-line or solely by reason of the existence or effect of a Relevant Plan Provision

- the Transferor shall give written notice to the Transferee stating whether or not the Transferor requires the diversion of the pipe-line or part of it whereupon the Transferee may in its unfettered discretion elect by notice in writing to be delivered within 3 months of the receipt of the Transferor's notice either:

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- 2.2.3

to carry out such works to the pipe-line as may be necessary so that the position of the pipe-line does not prevent the Development or

- 2.2.4

to divert the pipe-line or part of it along the Diversion Route or

- 2.2.5

to pay to the Transferor compensation for the loss of the value of any part of the Transferor's Land by reason of the restriction of Development due to the existence of the pipe-line such compensation to be determined in default of agreement by an arbitrator to be agreed between the Transferor and the Transferee or failing agreement to be appointed on the application of either party by the President for the time being of the Royal Institution of Chartered Surveyors

▪ [1319]

- PROVIDED ALWAYS that:

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- 2.2.6

if the Transferor obtains Planning Permission for the Development but does not give notice as above mentioned to the Transferee requiring the diversion of the pipe-line he shall nevertheless notify the Transferee of the obtaining of such Planning Permission and if the Transferee shall be of the

opinion that the Development would be likely to cause damage to the pipe-line or any interference with the exercise of the Specified Rights the Transferee may elect to divert the pipe-line or part of it along the Diversion Route or to carry out any such works as are described in Paragraph 2.2.3 above and

▪ 2.2.7

the Transferor shall not be entitled to give to the Transferee notice under this Paragraph 2.2 by reason of the refusal of Planning Permission (or by reason of the imposition of a condition in a Planning Permission preventing the Development from being carried out) unless the Transferor shall have afforded to the Transferee the opportunity (at the Transferee's expense) of appealing against the refusal of Planning Permission (or the imposition of such condition) including permitting the Transferee to lodge or to continue and to conduct any such appeal in the name of the Transferor subject to the Transferee bearing and indemnifying the Transferor against all costs and expenses incurred in connection with such appeal

▪ [1320]

• 3

Diversion route

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○ The Diversion Route shall be such route within the Described Land as shall be agreed between the Transferor and the Transferee or failing agreement as shall be determined by an arbitrator to be appointed by the President for the time being of the Institution of Civil Engineers as being the route which will cause the least possible interference with the use and enjoyment by the Transferor of the Described Land commensurate with the reasonable requirements of the Transferee in connection with the reconstruction of the pipe-line and its use as part of the Authorised Pipe-line

• 4

Conditions of diversion

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○ On a diversion of the pipe-line or part of it under the preceding Paragraphs of this Schedule:

○ 4.1

no consideration shall be payable by the Transferee to the Transferor but the Transferee shall make reasonable compensation to the Transferor or the occupier of the Described Land in respect of any Losses arising as a result of the diversion and the Transferee shall make good any damage to the Described Land to the reasonable satisfaction of the Transferor

○ 4.2

the pipe-line's points of ingress to and egress from the Described Land shall not (save where the Transferor otherwise allows) be varied and any special gates or marker posts at these points shall remain in situ

○ 4.3

the Transferor's reasonable surveyor's and legal fees properly incurred in connection with the diversion shall be reimbursed by the Transferee

○ [1321]

○ 4.4

the Transferor and all other necessary parties shall accept a re-transfer of the Property in whole or in part and enter into a further transfer similar in terms to this transfer in relation to the pipe-line or the particular part of it as so diverted (as the case may be) ('the New Transfer') except that:

- - 4.4.1  
there shall be no monetary consideration for either transfer
  - 4.4.2  
this Second Schedule and all references to the Diversion Provisions shall be excluded from the New Transfer except that for the purposes of the reference to the Diversion Provisions in Clause 12.5.2 there shall be substituted in the equivalent of such Clause in the New Transfer a reference to the provisions in the Second Schedule to the transfer in replacement of which the New Transfer has been entered into
  - 4.4.3  
the provisions to be contained in the New Transfer as to indemnity by the Transferee against Losses or the making good of or payment of compensation for Losses by the Transferee shall be at least as wide in scope as the corresponding provisions of this transfer and it is expressly acknowledged and agreed that any surrender pursuant to this Paragraph 4.4 shall be on terms which ensure the continued survival in full force and effect of all of the provisions of this transfer as to indemnity by the Transferee against Losses or the making good of or payment of compensation for Losses by the Transferee and all accrued liabilities and obligations (including under any provisions as to indemnity by the Transferee against Losses or the making good of or payment of compensation for Losses by the Transferee) of the Transferee whether in respect of any antecedent breach of any covenant or condition or otherwise

- 5  
Diversion (or payment of compensation) once only

- - As to the whole or any particular part of the pipe-line the carrying out of works to the pipe-line or diversion or payment of compensation in lieu of such actions shall take place or be payable (as the case may be) once only to the intent that these Diversion Provisions shall have effect once only with regard to the whole or any particular part of the pipe-line

[1322]

THE THIRD SCHEDULE  
Provisions referred to in Clause 12.3.8