

SABIC UK PETROCHEMICALS LIMITED (URN 20049383)

SABIC TEES HOLDINGS LIMITED (URN: H2TS-AFP121)

SABIC PETROCHEMICALS BV

APPLICATION BY H2TEESSIDE LIMITED FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE H2TEESSIDE PROJECT (EN070009)

DEADLINE 3

SABIC'S RESPONSE TO "DOCUMENT REFERENCE 8.11.9: RESPONSE TO EXQ1 DRAFT DEVELOPMENT CONSENT ORDER" [REP2-027]

No.	ExQ1	APPLICANT'S RESPONSES	SABIC'S RESPONSE
<p>Q1.9.67</p>	<p>Clarification</p> <p>Schedule 12 (PPs) — Please provide details of discussions and progress regarding PPs (if applicable). If you are in agreement with PPs relevant to you, please confirm this, if not, either provide copies of preferred wording for PPs, or if you have provided it elsewhere (such as in a SoCG), signpost where it can be found and explain why you do not want the wording as currently drafted to be used. Note, if this is provided in the requested Land Rights Tracker please signpost this to the ExA.</p>	<p>N/A</p>	<p>As of Deadline 3 the Applicant has not provided any assurances in relation to the payment of SABIC's legal costs for negotiating protective provisions. Such assurances would be usual in projects of this nature.</p> <p>SABIC provided the Applicant with a copy of its standard protective provisions at consultation stage, but as of Deadline 2 it had not received any indication as to the acceptance of these provisions in whole or in part.</p> <p>SABIC has now been provided with suggested amendments by the Applicant. Since a number of provisions have not been accepted by the Applicant, a copy of SABIC's protective provisions are copied at Annex 1.</p> <p>SABIC is prepared to engage in negotiations with the Applicant, but would reasonably have expected to receive costs assurances in the normal way before this stage of the Examination.</p>

ANNEX

SCHEDULE []
FOR THE PROTECTION OF SABIC

Article []

Benefit of protective provisions

1.—The following provisions of this Schedule have effect for the benefit of SABIC and any inventory owner, unless otherwise agreed between the undertaker and SABIC.

Interpretation

2. In this Schedule—

“access roads” means the access roads within the Order limits giving access to pipelines, the protected crossing or within the Wilton Complex, the North Tees site and the Brinefields;

“affected assets” means—

- (a) underground pipelines;
- (b) apparatus which would be physically affected by the relevant works;
- (c) the protected crossing where relevant works are to be carried out within 25 metres of the protected crossing; and
- (d) in relation to the exercise of an identified power, any apparatus in the protected land which would be affected by the exercise of that power.

“apparatus” means pipelines and cables owned or operated by SABIC and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Part in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any cathodic protection, coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962(a), as if the pipelines were a “pipe-line” in section 65(1) of that Act;

“Brinefields” means the land shown outlined in red on the Wilton Complex Plan;

“Brinefields Plan” means the plan entitled “(drawing number);”]

“construction access plan” means a plan identifying how access will be maintained to apparatus, the protected crossing, and to and within the Wilton Complex, the North Tees Facilities and the Brinefields during the proposed construction or maintenance work including—

- (a) any restrictions on general access by SABIC, including the timing of restrictions;
- (b) any alternative accesses or routes of access that may be available to the undertaker using the access roads;
- (c) details of how the needs and requirements of SABIC (including their needs and requirements in relation to any major works that they have notified to the other operators of the protected land as at the date when the plan is published) have been taken into account in preparing the plan;
- (d) details of how uninterrupted and unimpeded emergency access with or without vehicles will be provided at all times for SABIC; and

(a) 1962 c. 58. Section 65 was amended by section 89(1) of, and paragraphs 1 and 2 of Schedule 2 to, the Energy Act 2011 (c. 16), paragraph 7 of Schedule 1 of the Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937) and regulation 22 and paragraph 5 of the Schedule to the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011 (S.I. 2011/2305).

(e) details of how reasonable access with or without vehicles will be retained or an alternative provided for SABIC to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipelines and the protected crossing;

“construction or maintenance works” means any works to construct, maintain, or decommission the authorised development;

“damage” includes all damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

“engineer” means an engineer appointed by SABIC for the purposes of this Order;

“inventory owner” means a person owning or otherwise holding title to any substance in or carried by the pipelines;

“major works” means works by any person requiring the closure, diversion or regulation of any roads serving the apparatus, the protected crossing, the Wilton Complex the North Tees Facilities and the Brinefields;

“operator” means any person who is responsible for the construction, operation, use, maintenance or renewal of any pipeline;

“owner” means—

(a) in relation to the pipeline corridor, any person—

(i) with an interest in a pipeline in the pipeline corridor;

(ii) with rights in, on, under or over the pipeline corridor in respect of a pipeline; or

(iii) with a pipeline or proposed pipeline in, on, under or over the pipeline corridor;

(b) in relation to the access roads, any person—

(i) with an interest in the access roads; or

(ii) with private rights of way on or over the access roads;

(c) in relation to the protected crossing, any person—

(i) with an interest in the protected crossing;

(ii) with rights in relation to the protected crossing; or

(iii) with pipelines in or comprising the protected crossing; and

(d) in relation to protected land means any person falling within paragraphs (a) to (c) above.

“North Tees Facilities” means the land shown outlined in red on the North Tees Facilities Plan;

“North Tees Facilities Plan” means the plan entitled “XX” (drawing number XX);]

“pipeline corridor” means the land identified as the pipeline corridor on the [identify plan];

“pipelines” means any apparatus owned or operated by SABIC located in the pipeline corridor or in or comprising a protected crossing at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of the authorised development, providing that any such additions are notified to the undertaker as soon as reasonably practicable;

“pipeline survey” means a survey of the pipeline corridor and the protected crossing to establish (if not known)—

(a) the precise location of the pipelines and the protected crossing;

(b) the specification of the pipelines and protected crossing including, where relevant, their composition, diameter, pressure and the products they are used to convey;

(c) any special requirements or conditions relating to the pipelines which differ from the requirements or conditions applying to standard pipelines of that type;

(d) the precise location of any easement widths or rights (where it is possible to establish this).

“protected crossing” means the tunnel which carries pipelines under the River Tees known as Tunnel 2;

“protected land” means such parts of the Order land as fall within—

(a) the access roads;

(b) the pipeline corridor;

- (c) the protected crossing;
- (d) the Wilton Complex;
- (e) the North Tees Facility; and
- (f) the Brinefields

“relevant work” means a work which may have an effect on the operation, maintenance, abandonment of or access to any pipeline or the protected crossing;

“SABIC ” means SABIC UK Petrochemicals Limited (03767075) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF and SABIC Tees Holdings Limited (Company Number 06009440) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF;

“specified persons” means—

- (a) the following—
 - (i) Company Secretary, SABIC UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC UK Petrochemicals Limited;
 - (ii) Company Secretary, SABIC Tees Holdings Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC Tees Holdings Limited; or
 such other person as they may notify to the undertaker in writing.

“unknown rights” means rights which are—

- (a) not known at the date of the Order; or
- (b) identified as unknown in the book of reference,

but not including any rights relating to pipelines (or access to pipelines) where a pipeline is shown on the pipeline survey;

[“Wilton Complex” means the land shown outlined in red on the Wilton Complex Plan;

“Wilton Complex Plan” means the plan entitled “ (drawing number);]

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of any proposed temporary crossing points under paragraph 10;
- (c) details of methods and locations of any piling proposed to be undertaken under paragraph 13;
- (d) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 14;
- (e) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 15;
- (f) details of the location of any pipelines affected by the oversailing provisions in paragraph 16, including details of the proposed clearance;
- (g) details of the method location and extent of any dredging, a technical assessment of the likely effect of the dredging on the protected crossing and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossing;
- (h) details of the undertaker and their principal contractors’ management of change procedures;
- (i) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;
- (j) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to the pipeline;
- (k) details of the lifting study during the construction phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;
- (l) details of the lifting study during the operational phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;

- (m) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators;
- (n) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the cats pipeline cathodic protection system and the proposed remedial works; and
- (o) any further particulars provided in accordance with paragraph 4(2).

Pipeline survey

3.—(1) Before commencing any part of the authorised development in the pipeline corridor or which may affect a protected crossing the undertaker must—

- (a) carry out and complete the pipeline survey; and
- (b) comply with sub-paragraph (3) below.

(2) The pipeline survey must be undertaken by a surveyor who is a member of the Royal Institute of Chartered Surveyors with at least 10 years' experience of such surveys.

(3) When the pipeline survey has been completed the undertaker must serve a copy of the pipeline survey on SABIC and invite SABIC to advise the undertaker within 28 days of receipt of the survey if SABIC considers that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker must finalise its pipeline survey.

Authorisation of works details affecting pipelines or protected crossing

4.—(1) Before commencing any part of a relevant work the undertaker must submit to SABIC the works details in respect of any affected asset and obtain a written acknowledgement of receipt of those works details from the specified persons in relation to the affected asset concerned.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as SABIC may, within 45 days from the receipt of the works details under sub-paragraph (1), reasonably require.

5. No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by SABIC; or
- (b) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by an expert under paragraph 7(3); or
- (c) authorisation is deemed to have been given in accordance with paragraph 7(1).

6.—(1) Any authorisation by SABIC required under paragraph 5(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as SABIC may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset; and
- (b) the requirement for SABIC to have—
 - (i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and
 - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) The authorised development must be carried out in accordance with the works details authorised under paragraph 5 and any conditions imposed on the authorisation under paragraph 6(1).

(3) Where there has been a reference to an expert in accordance with paragraph 7(2) and the expert gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 7(3).

7.—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 4 within 45 days of the undertaker obtaining a written acknowledgment of receipt from a specified person under

paragraph 4(1) and no further particulars have been requested under paragraph 4(2); or

- (b) authorisation has not been given within 30 days of the undertaker obtaining a written acknowledgment of receipt from a specified person of the further particulars supplied under paragraph 4(2),

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that SABIC has unreasonably withheld its authorisation under paragraph 6(1); or
- (b) the undertaker considers that SABIC has given its authorisation under paragraph 6(1) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under [paragraph 34].

(3) Where the matter is referred to an expert under paragraph 7(2) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 6(1).

Notice of works

8. The undertaker must provide to SABIC a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

Further provisions about works

9.—(1) Before carrying out a relevant work the undertaker must—

- (a) provide the owners and any operators of any affected asset with baseline data for any existing cathodic protection of the asset; and
- (b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

(2) The pipelines must be located by hand digging prior to the use of mechanical excavation provided that any excavation outside of 2 metres of the centreline of a pipeline may be dug by mechanical means.

(3) The undertaker must engage an independent construction Quality Assurance Inspector to oversee cats pipeline critical construction activities during the construction phase.

10.—(1) Where temporary crossings for construction traffic are to be used, other than where the pipelines are under a carriageway of adequate standard of construction, then the crossing points must be suitably reinforced with sleepers or road plates or a specially constructed reinforced concrete raft or by installing a temporary bridge over the pipeline as necessary.

(2) Details of proposed temporary crossing points referred to in sub-paragraph (1) must be notified to the owner and operator of the pipeline in accordance with paragraph 4.

11. During construction, an area equivalent to the easement widths of the pipelines (taken from the actual location of the pipelines shown on the pipeline survey) must be fenced off using some form of visual indication such as netlon fencing or “heras” type fence panels. Suitable signage warning of the danger of live pipelines must be erected at a minimum distance of every 50 metres.

12. No explosives are to be used within the protected land.

13.—(1) All piling within 1.5 metres of the centreline of a pipeline must be non-percussive.

(2) Where piling is required within 50 metres of the centreline of a pipeline or which could have an effect on the operation or maintenance of a pipeline or access to a pipeline, details of the proposed method for and location of the piling must be provided to SABIC for approval in accordance with paragraph 4.

14.—(1) Where excavation of trenches (including excavation by dredging) adjacent to a pipeline affects its support, the pipeline must be supported in a manner approved by SABIC.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures

such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone of influence of those excavations and provide those calculations to SABIC under paragraph 4.

15.—(1) Where a trench is excavated across or parallel to the line of a pipeline, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to the pipeline.

(2) Proposed methods and locations of compacting must be notified to SABIC in accordance with paragraph 4.

(3) Compaction testing must be carried out once back filling is completed to establish whether the backfill has been adequately compacted as referred to in sub-paragraph (1) and what further works may be necessary, and the results of such testing must be supplied to SABIC.

(4) Where it is shown by the testing under sub-paragraph (3) to be necessary, the undertaker must carry out further compaction testing under sub-paragraph (1) and sub-paragraphs (1), (2) and (3) continue to apply until such time as the backfill has been adequately compacted.

(5) In the event that it is necessary to provide permanent support to a pipeline which has been exposed over the length of the excavation before backfilling and reinstatement is carried out, the undertaker must pay to SABIC a capitalised sum representing the increase of the costs (if any) which may be expected to be reasonably incurred in maintaining, working and, when necessary, renewing any such alterations or additions.

(6) In the event of a dispute as to—

- (a) whether or not backfill has been adequately compacted under sub-paragraphs (1) to (4); or
- (b) the amount of any payment under sub-paragraph (5),

the undertaker or SABIC may refer the matter to an expert for determination under paragraph 32.

16.—(1) A minimum clearance of 1,500 millimetres must be maintained between any part of the authorised development and any affected asset (whether that part of the authorised development is parallel to or crosses the pipeline) unless otherwise agreed with SABIC.

(2) No manholes or chambers are to be built over or round the pipelines.

Monitoring for damage to pipelines

17.—(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify SABIC to enable repairs to be carried out to the reasonable satisfaction of SABIC.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of SABIC—

- (a) afford SABIC all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to SABIC its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of SABIC to have effectively repaired the affected asset before any backfilling takes place.

(4) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where SABIC agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(6) In the event that the undertaker does not carry out necessary remedial work in a timely manner then SABIC is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

18.—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and SABIC must be notified immediately.

- (2) Where there is leakage or escape of gas or any other substance, the undertaker must immediately—
- (a) remove all personnel from the immediate vicinity of the leak;
 - (b) inform SABIC;
 - (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
 - (d) assist emergency services as may be requested.

Compliance with requirements, etc. applying to the protected land

19.—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting owners of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

- (2) The undertaker is not bound by any condition, requirement or regulation that is—
- (a) introduced after the date on which notice of the works was given under paragraph 8 ;or
 - (b) determined by the expert following a determination under paragraph 32 to unreasonably—
 - (i) create significant engineering, technical or programming difficulties;or
 - (ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

Access for construction and maintenance

20.—(1) Before carrying out any construction or maintenance works affecting SABIC's access rights over the access roads, the undertaker must prepare a draft construction access plan and consult on the draft construction access plan with SABIC.

(2) The undertaker must take account of the responses to any consultation referred to in sub- paragraph (1) before approving the construction access plan.

21.—(1) In preparing a construction access plan under paragraph 20 the undertaker must—

- (a) take into account SABIC's programme for major works in the pipeline corridor the Wilton Complex, the North Tees Facilities and the Brinefields and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and
- (b) where it proposes to restrict or extinguish SABIC's access to the protected land, or any pipeline or the Wilton Complex, the North Tees Facilities or the Brinefields first provide an alternative or replacement means of access together with facilities and rights which are no less advantageous to SABIC.

(2) Where a reference is made to expert determination under paragraph 32 in relation to any disagreement about a construction access plan, in addition to the criteria set out in paragraph 32(6) the appointed expert must have regard to—

- (a) whether major works were, at the date of the consultation already programmed to take place;
- (b) the extent to which the authorised development can be accommodated simultaneously with the programmed major works;
- (c) the usual practice in respect of conditions or requirements subject to which authorisation to close or divert the access roads is given by the owner of the access roads;
- (d) the undertaker's programme in respect of the authorised development and the extent to which it is reasonable for it to carry out the authorised development at a different time;
- (e) the availability (or non-availability) of other times during which the authorised development could be carried out;
- (f) the programme in respect of the major works and the extent to which it is reasonable for SABIC to carry out the major works at a different time; and

(g) the financial consequences of the decision on the undertaker and on SABIC.

(3) In this paragraph, “programmed”, in relation to works, means works in respect of which the owner of the access roads has been notified of the specific dates between which the works are programmed to be carried out provided that the period covered by such dates must be length of time the works are programmed to be carried out and not a period within part of which the works are to be carried out.

22.—(1) No works affecting access rights over the access roads are to commence until 30 days after a copy of the approved construction access plan is served on SABIC.

(2) Where SABIC refers the construction access plan to an expert for determination under paragraph 32, no works affecting access rights over the access roads may commence until that determination has been provided.

(3) In carrying out construction or maintenance works the undertaker must at all times comply with the construction access plan.

Restriction on exercising powers

23.—(1) The undertaker must not in the exercise of the powers conferred by this Order acquire, appropriate, extinguish, suspend or override any rights in the protected land if the authorised development can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment, suspension or override.

(2) The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on SABIC, including any disruption to access and supplies of utilities and other services that are required by them in order to carry out their operations.

24.—(1) The undertaker must not exercise the powers conferred by article [XX] (power to override easements and other rights), article [XX] (compulsory acquisition of rights etc.), article [XX] (private rights) or article [XX] (acquisition of subsoil or airspace only)] to acquire, appropriate, extinguish, suspend or override any rights of SABIC in the protected land relating to the pipelines or access to pipelines except in relation to unknown rights.

(2) Regardless of sub-paragraph (1) the undertaker must not exercise the identified powers in respect of SABIC's land, rights and interests unless one of the following consents has been given—

- (a) written consent by SABIC;
- (b) consent by an expert appointed under paragraph 32; or
- (c) deemed consent in accordance with sub-paragraph (7).

(3) Where an identified power provides for the undertaker to automatically extinguish or override a right or interest of SABIC, the restriction in sub-paragraph (2) is to operate so that the extinguishment or override of the right or interest does not apply unless SABIC has given its consent or consent has been given by an expert appointed under paragraph 32 or is deemed to be given under sub-paragraph (7).

(4) Where SABIC's consent is required under sub-paragraph (2), that consent must not be unreasonably withheld.

(5) If the undertaker considers that consent has been unreasonably withheld, the undertaker may refer the request for consent to an expert appointed under paragraph 32 for determination.

(6) If SABIC fails to respond to a request for consent within 30 days of the undertaker obtaining a written acknowledgement of receipt of the request for consent from SABIC the undertaker may serve a further notice on SABIC (a “deeming notice”).

(7) In the event that SABIC fails to respond to a deeming notice within 10 working days from the date when a written acknowledgement of receipt of the deeming notice is obtained by the undertaker from the specified person, the consent of SABIC is deemed to be given.

(8) In this paragraph, “identified powers” means the powers conferred by the following—

- (a) article [] (street works);
- (b) article [] (temporary stopping up of streets, public rights of way and access land);
- (c) article [] (access to works);

- (d) article [] (discharge of water);
- (e) article [] (authority to survey and investigate the land);
- (f) article [] (compulsory acquisition of land) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);
- (g) article [] (power to override easements and other rights) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);
- (h) article [..] (compulsory acquisition of rights etc.) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);
- (i) article [..] (private rights) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);
- (j) article [..] (acquisition of subsoil or airspace only);
- (k) article [] (rights under or over streets);
- (l) article [..] (temporary use of land for carrying out the authorised development); and
- (m) article [..] (temporary use of land for maintaining the authorised development).

Insurance

25.—(1) Before carrying out any part of the authorised development on the protected land, the undertaker must put in place a policy of insurance with a reputable insurer against its liabilities under [paragraph 27] in accordance with the terms and level of cover notified under sub-paragraph (2) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under [paragraph 32], and evidence of that insurance must be provided on request to SABIC.

(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify SABIC of details of the terms of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

(3) The undertaker must maintain insurance in relation to the authorised development affecting SABIC during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover specified in sub-paragraph (2) or at such level as may otherwise be determined by an expert under paragraph 32.

26.—(1) If SABIC has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 26—

- (a) SABIC may refer the matter to an expert for determination under paragraph 32; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 32 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

27.—(1) The undertaker must repay to SABIC all reasonable fees, costs, charges and expenses reasonably incurred by SABIC in relation to these protective provisions in respect of—

- (a) authorisation of survey details submitted by the undertaker under paragraph 3(3), authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 6;
- (b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 8;
- (c) responding to the consultation on piling under paragraph 13;
- (d) considering the effectiveness of any compacting which has taken place under paragraph 15, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;
- (e) the repair and testing of a pipeline or protected crossing under paragraph 18;

- (f) considering and responding to consultation in relation to the construction access plan under paragraph 20 and providing details of their programme for major works to the undertaker under paragraph 21;
- (g) dealing with any request for consent or agreement by the undertaker under paragraph 24; and
- (h) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 25,

including the reasonable costs incurred by SABIC in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to allow SABIC to carry out its functions under these protective provisions.

(2) The undertaker must indemnify and keep SABIC and any inventory owner indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage, which may be occasioned or reasonably incurred by the them—

- (a) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of the authorised development,

and the fact that any act or thing may have been done by SABIC on behalf of the undertaker or in accordance with plans approved by or on behalf of SABIC or in accordance with any requirement of the engineer appointed by SABIC or under his supervision does not (if it was done without negligence on the part of SABIC or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(3) SABIC or inventory owner must give the undertaker reasonable notice of any claim or demand under sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(4) SABIC or inventory owner must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part.

(5) In the assessment of any sums payable to SABIC or inventory owner under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, the SABIC or an inventory owner if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

Further protection in relation to the exercise of powers under the Order

28. The undertaker must give written notice to SABIC of the terms and level of cover of any guarantee or alternative form of security put in place under [article 48 (funding for compulsory acquisition compensation)] and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

29. The undertaker must give written notice to the SABIC if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 8 (consent to transfer benefit of this Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

30. The undertaker must, when requested to do so by SABIC, provide it with a complete set of the

documents submitted to and certified by the Secretary of State in accordance with article 45 (certification of plans etc.) in the form of a computer disc with read only memory.

31. Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to SABIC.

Expert determination

32.—(1) Except as provided in sub-paragraph (7), article 47 (arbitration) does not apply to this Part.

(2) Any difference under this must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
- (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;
- (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (i) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 40.