

**17 FEBRUARY 2025**

**THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010**

**THE H2 TEESSIDE PROJECT**

**WRITTEN SUBMISSION AT DEADLINE 7A**

**ON BEHALF OF NATIONAL GAS TRANSMISSION PLC**

**REF: ADEA/TWHI/3011593.11**



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**WRITTEN SUBMISSION AT DEADLINE 7A ON BEHALF OF NATIONAL GAS  
TRANSMISSION PLC**

**1 INTRODUCTION**

1.1 National Gas Transmission Plc (“**NGT**”) made a Relevant Representation in this matter on 1 July 2024 [**RR-017**], a Written Representation on 3 October 2024 [**REP2-067**], and further submissions on 19 November 2024 at Deadline 4 [**REP4-029**], on 20 December 2024 at Deadline 5 [**REP5-063**], on 22 January 2025 at Deadline 6A [**REP6A-032**] and on 7 February 2025 at Deadline 7 [**REP7-048**] (together the “**Existing Representations**”).

1.2 NGT also attended Compulsory Acquisition Hearing 2 (“**CAH2**”) which was held virtually on 13 January 2025.

1.3 This Written Submission, which is made at Deadline 7A (17 February 2025), responds to Question Nos. 2, 4 and 5 as set out in Annex B to the Examining Authority’s Procedural Decision of 10 February 2025 [**PD-020**].

1.4 It is intended that this Written Submission will constitute NGT’s final written submission into the Examination. However, in light of the continued absence of direct substantive engagement from the Applicant, NGT must necessarily reserve the right to make further submissions before the close of the Examination.

1.5 NGT would also be pleased to provide the ExA with clarification on any of the matters contained within this Written Submission.

**2 RESPONSE TO QUESTION NO. 2**

*The Examining Authority (ExA) would invite all IPs to summarise their position, in regard to: i) any outstanding objection(s); ii) Protective Provisions (PP); iii) CA/ temporary possession; and iv) the status of any side agreement, interface agreement or other relevant agreements they consider necessary to provide relevant protections or mitigations from the Proposed Development.*

**Status of Objection:**

2.1 NGT’s overall position in this matter, as stated in Paragraphs 1.2 and 1.3 of [**REP5-063**], remains unchanged and, accordingly, NGT must continue to maintain its existing **objection**.

**Status of Protective Provisions:**

2.2 Whilst there has been some recent engagement with the Applicant (including as noted in [**REP7-048**]), Protective Provisions for the benefit of NGT are not yet in an agreed form.

2.3 That said, it is understood from recent engagement, and indeed it is inferred in the response at Table 2-1 of the Applicant’s “Comments on Submissions received at Deadline 6A” [**REP7-024**], that the Applicant is now content for Paragraph 6 (*Acquisition of land*) to be reinstated within the Protective Provisions included for the benefit of NGT in Schedule 20 to the draft Order. NGT therefore expects Paragraph 6 to be included within the revised draft Order which is to be submitted by the Applicant at Deadline 7A.

- 2.4 NGT was, however, made aware on 14 February 2025 of two further qualifications which the Applicant proposes to include within the drafting of Paragraph 6. No justification has been provided for either of those amendments.
- 2.5 For completeness, those further amendments are included in red text and are highlighted yellow in the form of Paragraph 6 contained in Appendix 1 to this Written Submission. However, they are **not** agreed to by NGT for the reasons outlined in Appendix 2 to this Written Submission.
- 2.6 Similarly, Paragraph 3.4 of [REP6A-032] identified further amendments required by NGT in respect of Paragraphs 7(3), 11(5) and 14 of the Protective Provisions. Whilst the change to Paragraph 14 has now been accepted by the Applicant, the amendments to Paragraphs 7(3) and 11(5) are **not** agreed and, therefore, continue to be shown in red text and are highlighted yellow in Appendix 1.
- 2.7 The Applicant's response in Table 2-1 of [REP7-024] indicates that the Applicant considers it is the responsibility of NGT to justify the necessity for each of those amendments.
- 2.8 Notwithstanding the fact that the Applicant's position is fundamentally at odds with Paragraph 4.1 of Advice Note 15 (Drafting Development Consent Orders),<sup>1</sup> NGT has included, at Appendix 2 to this Written Submission, further justification in support of its position in respect of each of the abovementioned amendments.
- 2.9 Finally, and further to Appendix 1 of [REP6A-032], NGT would also welcome clarification from the Applicant that it agrees with NGT that the imposition of a cap on the indemnity in Paragraph 11 of the Protective Provisions is not appropriate and that it will not seek one.

**Status of Side Agreement:**

- 2.10 As noted in [REP7-048], NGT has been engaged in lengthy negotiations with the Applicant regarding a Side Agreement which it was intended would secure other appropriate contractual obligations in respect of matters which have not previously been put before the Examining Authority.
- 2.11 As set out in Appendix 3 of [REP6A-032], a draft of the Side Agreement was first shared with the Applicant on 1 July 2024. Comments were not received from the Applicant until 21 November 2024, with a revised draft then returned to the Applicant on 17 January 2025. Despite seeking to reassure NGT that it is committed to resolving all outstanding matters before the close of the Examination, the Applicant has not yet responded on that amended drafting.
- 2.12 NGT is therefore no longer hopeful that the Side Agreement will be capable of being completed before the close of the Examination.
- 2.13 As a consequence, NGT has amended the Protective Provisions included in Appendix 1 to this Written Submission in order to secure, through the draft Order, the substantive matters which have been under negotiation between the parties since 1 July 2024. (These amendments, which are limited to Paragraphs 2 and 11 of the Protective Provisions, are also shown in red text and highlighted yellow in Appendix 1). Appendix 2 to this Written Submissions provides NGT's justification for the inclusion of those further amendments.

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<sup>1</sup> Paragraph 4.1 of Advice Note 15 expects applicants to submit the standard protective provisions for protected parties with any amendments that the applicant is seeking annotated with "full justification included within the Explanatory Memorandum".

- 2.14 These matters are not “commercial matters” as the Applicant has sought to characterise them in Table 2-1 of [REP7-024].
- 2.15 NGT wishes to emphasise, for the avoidance of doubt, that the inclusion of these additional matters within the Protective Provisions is a direct consequence of both the very real and serious risk posed to NGT’s existing statutory undertaking if the specific impacts of the Applicant’s proposals are not properly mitigated and also the dilatory manner in which the Applicant has conducted negotiations. The anticipated impacts to NGT’s undertaking are explained in Paragraph 2 of Appendix 1 to [REP6A-032].

3 **RESPONSE TO QUESTION NO. 4**

*Please can all Statutory Undertakers state if they consider that the Applicant has satisfied the tests in PA2008 in relation to Statutory Undertakers land where this relates to your undertakings.*

- 3.1 Section 127(6) of the Planning Act 2008 is recognised as a statutory test of great significance. Alongside establishing the need for a compelling case in the public interest for compulsory acquisition, it is the Applicant’s responsibility to conclusively demonstrate to the Secretary of State that the statutory test under Section 127(6) can be satisfied.
- 3.2 Leaving aside the absence of any meaningful attempts to seek to acquire by negotiation the land (and, by extension, interests in or rights over land) required for its current proposals, the Applicant has provided no evidence whatsoever to demonstrate that its proposals, if consented, will not give rise to serious detriment to the carrying on of NGT’s statutory undertaking.
- 3.3 It is NGT’s position that, without full and effective mitigation being legally secured, the Applicant’s proposals will give rise to serious detriment to NGT’s statutory undertaking in the context of the application of the statutory test under Section 127(6). Any detriment caused to the carrying out of NGT’s undertaking, in consequence of the acquisition of the rights, could not be made good by the use of other land belonging to NGT or available for acquisition by NGT.
- 3.4 For the reasons articulated in sub-paragraphs (viii) to (xii) of Paragraph 2 of Appendix 1 to [REP6A-032], the reinstatement of Paragraph 6 (*Acquisition of land*) within the Protective Provisions included for the benefit of NGT in Schedule 20 to the draft Order is considered a fundamental necessity in order to assist in mitigating that risk.
- 3.5 The inclusion within the Protective Provisions of the additional measures referred to in Paragraph 2.11 of this Written Submission will further mitigate the risk to NGT’s statutory undertaking.

4 **RESPONSE TO QUESTION NO. 5**

*The ExA will not be asking the Secretary of State to decide and consult further on which version of a PP to include in the final Development Consent Order (DCO) if any are not agreed by the close of the Examination. To that end, please can all parties who are negotiating PPs, including the Applicant, provide by DL7a on Monday 17 February 2025 a statement of agreement of a single version of PPs with that agreed version presented to the ExA. If this is not possible please provide the following: • Your preferred version of PPs which should be highlighted to show where there is disagreement. • Commentary as to the reason for the disagreement and why this disagreement has not been resolved. • Commentary on the potential consequences if this is not resolved in your favour. • Statement of progress on any*

*side agreements. We reiterate that we will not be rewriting PPs, we will be recommending one of the versions which is presented to us by the end of the Examination. All parties will have a further opportunity to comment on DL7a submissions at DL8 on Monday 24 February 2025 with the Applicant's final reply to these comments at DL9 on Friday 28 February 2025. If PPs are subsequently agreed after DL7a and before the close of the Examination, the ExA will accept these as additional submissions at any time between DLs with conformation from both parties that these are indeed an agreed version.*

- 4.1 NGT has received no correspondence from the Applicant regarding a 'statement of agreement' in the form contemplated by the Examining Authority.
- 4.2 As a consequence, and as explained in the preceding paragraphs of this Written Submission:
- (a) Appendix 1 contains a copy of the Protective Provisions which NGT would request are recommended for inclusion at Schedule 20 to the draft Order. Matters not agreed, including the additional measures referred to above in Paragraphs 2.11 and 2.12, are shown in red text and are highlighted yellow.
  - (b) Appendix 2 provides further justification in support of NGT's position in respect of all of the matters not yet agreed.
- 4.3 A statement of progress in respect of the Side Agreement is included in Paragraphs 2.8 to 2.10.

**Bryan Cave Leighton Paisner LLP**

**For and on behalf of National Gas Transmission Plc**

**17 February 2025**

## Appendix 1

### Protective Provisions for the benefit of NGT

#### SCHEDULE 20

Article 41

### PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

#### Application

1. For the protection of National Gas as referred to in this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

#### Interpretation

2. In this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group; and "A3" if the rating is assigned by Moody's Investors Services Inc;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event), such insurance shall be effected and maintained:

(a) during the construction period of the authorised development; and

(b) after the construction period of the authorised development in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitutes specified works,

and arranged with an insurer whose security/credit rating meets the same requirements as an acceptable credit provider, and such policy shall include (but without limitation):

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas; and

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a sub-limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means:

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Gas to cover the undertaker's liability to National Gas for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas); or

(c) evidence provided to National Gas' satisfaction that the undertaker has a tangible net worth of not less than £100,000,000 (one hundred million pounds) (or an equivalent financial measure).

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas

for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2(1) (interpretation) of this Order and includes any associated development authorised by the Order and (unless otherwise specified) for the purposes of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

“commence ” and “commencement” has the same meaning as in article 2(1) (interpretation) of this Order save that for the purposes of this Schedule only shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment within 15 metres measured in any direction of any apparatus;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary mitigation measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for National Gas’s approval a ground mitigation scheme;

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

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Gas” means National Gas Transmission plc (Company Number 02006000) whose registered office is at National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the 1986 Act;

“Network Code” means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter’s Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas’s Gas Transporters Licence, as both documents are amended from time to time;

“Network Code Claims” means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means any of the authorised development or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 67(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 67(2) or otherwise; and/or

(c) includes any of the activities that are referred to in section 8 of T/SP/SSW/22 (National Gas's policies of safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties"); and

"undertaker" means the undertaker as defined in article 2(1) of this Order.

### **On Street Apparatus**

3. Except for paragraphs 4 (apparatus of National Gas in streets subject to temporary closure), 89 (retained apparatus), 910 (expenses) and 1011 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Gas, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

### **Apparatus of National Gas in streets subject to temporary closure**

4. Notwithstanding the temporary closure or diversion of any street under the powers of article 13 (temporary closure of streets and public rights of way), National Gas will be at liberty at all times to take all necessary access across any such closed street and/or to execute and do all such works and things in, upon or under any such street 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 street.

### **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas.

### **Acquisition of Land**

6. —(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas otherwise than by agreement ~~not to be unreasonably withheld.~~

~~(2) — Sub-paragraph 6(1) does not apply to any interest in any land or apparatus of National Gas which a third party owns or is the beneficiary of.~~

(3) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development.

(4) Save where otherwise agreed in writing between National Gas and the undertaker, the undertaker and National Gas agree that where there is any inconsistency or duplication between the



provisions set out in this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(5) Any agreement or consent granted by National Gas under paragraph 12 or any other paragraph of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

7.—(1) If, in the exercise of powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of National Gas 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 National Gas in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Gas to its satisfaction (taking into account paragraph 78(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus **of or** part of such apparatus is to be constructed, National Gas **must may, in its sole discretion,** 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 assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation must not extend to the requirement for National Gas to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such a manner and in such line or situation as may be agreed between National Gas and the undertaker.

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Gas of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

### **Facilities and rights for alternative apparatus**

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Gas under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Gas 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 matter will be referred to arbitration in accordance with paragraph 4415 (arbitration) of this Schedule and the arbitrator may make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and describe—

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

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(4) Any approval of National Gas required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) and (2) must be executed in accordance with the plan, submitted under sub-paragraph (2) or as relevant sub-paragraph (5) as approved or as amended from time to time by agreement between the undertaker and National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(7) Where National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Gas's satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas in accordance with sub-paragraph (4) or (6) 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, 6 and 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 30 days before commencing the execution of the specified works (or part thereof), a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in Part 3 of the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times;

(11) At all times when carrying out any works authorised under the Order, National Gas must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(-G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 910.

## Expenses

10.—(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas on demand all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Gas in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas—
    - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 67(3); or
    - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;
  - (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
  - (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
  - (d) the approval of plans;
  - (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
  - (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.
- (2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.
- (3) If in accordance with the provisions of this Schedule—
- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 4415 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under 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 National Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) will, 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 National Gas any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents the benefit.

## **Indemnity**

**11.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of National Gas, or there is any interruption in any service provided by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and
- (b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party and including Network Code Claims other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (2) unless National Gas fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, employees, servants, contractors or agents; and
  - (b) any part of the authorised development and/or any other works authorised by this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the 2008 Act or article 8 (consent to the transfer benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development yet to be executed and not falling within this sub-sub-paragraph (b) will be subject to the full terms of this Schedule including this paragraph; and/or
  - (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.
- (4) National Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability, compromise or demand must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.
- (5) National Gas must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph applies where it is within National Gas’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas’s control and, if reasonably requested to do so by the undertaker, National Gas must provide an explanation of how the claim has been minimised ~~or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).~~
- (6) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.
- (7) ~~The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas’ apparatus until the following conditions are satisfied—~~
- ~~(a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and National Gas has confirmed the same to the undertaker in writing; and~~
  - ~~(b) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it shall maintain such acceptable insurance for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and National Gas has confirmed the same in writing to the undertaker.~~

### **Enactments and agreements**

**12.** Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Schedule affects the provision of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Cooperation**

**13.—(1)** Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Gas requires the removal of apparatus under paragraph

7(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to coordinate 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 National Gas's undertaking and National Gas must use its best endeavours to cooperate with the undertaker for that purpose.

(2) For the avoidance of doubt, whenever National Gas's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

14. If, in consequence of **the agreement reached in accordance with paragraph 6(1) or** the powers granted under this Order, the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

15. Save for the differences or disputes arising under paragraphs **67(2)**, **67(4)**, **78(1)** and **89**, any difference or dispute arising between the undertaker and National Gas under this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 46 (arbitration).

### **Notices**

16. Notwithstanding article 45 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph **89** must be submitted using the LSBUD system or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## Appendix 2

### Protective Provisions: Matters Not Agreed

Para.	Protective Provision Wording	NGT's Justification for Amendment Sought
6(1)	<p><i>Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas otherwise than by agreement <b>not to be unreasonably withheld.</b></i></p>	<p>The Applicant has provided no justification for the amendment proposed to Paragraph 6(1).</p> <p>In any event, NGT does not agree with the Applicant's proposed amendment. Paragraph 13(2) already imposes an obligation on NGT not to unreasonably withhold its consent where, amongst other things, NGT's consent is required in respect of the taking of action by the undertaker. The additional wording is, therefore, considered to be an unnecessary duplication.</p>
6(2)	<p><i><b>Sub-paragraph 6(1) does not apply to any interest in any land or apparatus of National Gas which a third party owns or is the beneficiary of.</b></i></p>	<p>The Applicant has provided no justification for the proposed inclusion of an entirely new Paragraph 6(2).</p> <p>The intended scope and effect of the provision is uncertain from its drafting. Absent any further clarification, it would appear to represent – at best – a wholly unnecessary qualification on the intended scope of Paragraph 6(1) and – at worst – an unacceptable limitation on a provision which NGT has already demonstrated in [REP5-063] and [REP6A-032] is of fundamental importance from the perspective of NGT's statutory undertaking.</p> <p>NGT made reference, at Paragraph 3.5 of [REP5-063], to an extensive list of established precedent which supports the position adopted by NGT (and indeed other statutory undertakers) as to the necessity of Paragraph 6. It is notable that none of those previous Orders included a qualification or limitation in the form which the Applicant is now seeking.</p>



Para.	Protective Provision Wording	NGT's Justification for Amendment Sought
7(3)	<p><i>If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus of or part of such apparatus is to be constructed, National Gas <b>must may, in its sole discretion</b>, 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 assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation must not extend to the requirement for National Gas to use its compulsory purchase powers to this end unless it elects to do so.</i></p>	<p>In overall terms, Paragraph 7 specifies the steps to be taken to secure the provision of alternative apparatus where NGT's existing apparatus is required to be removed as a consequence of the Authorised Development.</p> <p>Paragraph 7(2) places an absolute obligation on the Applicant to secure the consents, facilities and rights required in order for any alternative apparatus to be constructed and maintained. In that context, Paragraph 7(3) seeks to provide for cooperation between the Applicant and NGT in certain circumstances.</p> <p>As previously articulated, NGT is not opposed to the Authorised Development (and, indeed, there is a commercial relationship between the Applicant and NGT in respect of "Project Union" as described in NGT's response to ExQ1 Q1.2.7). NGT would therefore be amenable, in principle, to cooperating with the Applicant in the manner anticipated by Paragraph 7(3).</p> <p>However, NGT cannot be compelled to take such steps, regardless of the circumstances, and especially where to do so could or would place it in breach of its licence obligations or wider statutory duties. Any steps taken pursuant to Paragraph 7(3) must necessarily be at NGT's discretion.</p> <p>NGT also disagrees with the Applicant's characterisation (in Table 2-1 of [REP7-024]) that the amendment sought is "<i>not a standard approach for NGT on other DCOs.</i>"</p> <p>Reference is made, by way of example, to the identical wording included by the Secretary of State in Paragraph 87(3) of Part 7 of Schedule 15 to The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024. Commercial terms agreed in the context of The Net Zero Teesside Order 2024 also contained a limitation of very similar effect.</p>
11(5)	<p><i>National Gas must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph applies where it is within National Gas's reasonable ability and control to</i></p>	<p>As the Examining Authority will be aware, NGT has strongly opposed (and continues to strongly oppose) the Applicant's proposals to insert a cap on the indemnity included in Paragraph 11 of the Protective Provisions.</p> <p>In this context, NGT is concerned that the imposition by the Applicant of a requirement in Paragraph 11(5) for NGT to substantiate any cost or compensation</p>



Para.	Protective Provision Wording	NGT's Justification for Amendment Sought
	<p><i>do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas's control and, if reasonably requested to do so by the undertaker, National Gas must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).</i></p>	<p>claimed under the Paragraph 11 indemnity will, in effect, constitute a means through which the indemnity will be capped in practical terms. This would be wholly inappropriate and would run contrary to the well-established central principle that DCO promoters must bear the risk in respect of impacts to statutory undertakers' apparatus posed by the proposed development (see further at Paragraph 3.15 of [REP5-063]).</p> <p>The Applicant's proposed drafting is also unnecessary, given there is already a requirement within Paragraph 11(5) for NGT to use its reasonable endeavours to mitigate and to minimise any costs or expenses to which the indemnity applies.</p> <p>There is also an extensive list of established precedent which supports NGT's position on this particular point (to which see further at Paragraph 3.5 of [REP5-063]).</p>
11(7)	<p><i>The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas' apparatus until the following conditions are satisfied—</i></p> <p><i>(a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and National Gas has confirmed the same to the undertaker in writing; and</i></p> <p><i>(b) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory</i></p>	<p>The inclusion of Paragraph 11(7) (and the corresponding additional defined terms in Paragraph 2) mirrors matters which have been under negotiation between the parties since 1 July 2024 in respect of a Side Agreement.</p> <p>The requirement for the Applicant to procure a minimum standard of third party liability insurance and to provide evidence of its financial standing is necessary to underpin the integrity of the indemnity already included in Paragraph 11 of the Protective Provisions and, in turn, to assist in mitigating the anticipated impacts to NGT's undertaking as explained in detail in Paragraph 2 of Appendix 1 to [REP6A-032].</p> <p>The drafting which NGT is seeking to include in the draft Order has very recent and extensive precedent. See, for example, Part 7 of Schedule 15 to The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, Part 3 of Schedule 15 to The Mallard Pass Solar Farm Order 2024 and Part 4 of Schedule 10 to The HyNet Carbon Dioxide Pipeline Order 2024.</p> <p>Whilst NGT's understanding is that the Applicant does not dispute the need, in principle, to procure acceptable insurance and to provide evidence of acceptable security, there has been some reluctance to agree to the financial thresholds set out in the current drafting.</p>

Para.	Protective Provision Wording	NGT's Justification for Amendment Sought
	<p><i>constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it shall maintain such acceptable insurance for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and National Gas has confirmed the same in writing to the undertaker.</i></p>	<p>From its perspective, NGT considers that £50 million represents an acceptable level of third party liability insurance required to be held by any DCO promoter. It is noted that this is a standard figure adopted across the gas industry and is sought by NGT in respect of all DCO schemes. NGT considers that this level of third-party liability insurance is widely available on the insurance market and NGT submits that is it not unreasonable for the Applicant, given its strong covenant, to obtain a precedented level of insurance cover.</p>