

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF INEOS
NITRILES (UK) LIMITED**

1. For the protection of INEOS, the following provisions have effect, unless otherwise agreed in writing between the undertaker and INEOS.

2. In this Schedule—

“INEOS” means INEOS Nitriles (UK) Limited (company number 06238238), whose registered office is at Biz Hub, Belasis Business Centre Coxwold Way, Belasis Business Park, Billingham, TS23 4EA and any successor in title or function to the INEOS operations;

“INEOS operations” means the operations or property within Order limits vested in INEOS, including the pipeline crossing the Order limits owned and operated by INEOS used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-Lines Act 1962;

“parties” means the undertaker and INEOS, and “party” shall be construed accordingly;

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic;
- (d) schedules of work and risk assessments for the proposed work; and
- (e) any further particulars provided in response to a request under paragraph 3.

Consent under this Schedule

3. Before commencing any part of the authorised development which may have an effect on the operation or maintenance of the INEOS operations or access to them, access to any land owned by INEOS that is adjacent to the Order Limits, or which would otherwise be located on land within the INEOS operations, the undertaker must submit to INEOS the works details for the proposed works and such further particulars as INEOS may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

4. No works comprising of any part of the authorised development which would have an effect on the operation or maintenance of the INEOS operations or access to them, access to any land owned by INEOS that is adjacent to the Order Limits, or which would otherwise be located on land within the INEOS operations are to be commenced until the works details in respect of those works submitted under paragraph 3 have been approved by INEOS.

5.—(1) Any approval of INEOS required under paragraph 4 must not be unreasonably withheld or delayed but may be:

- (a) reasonably refused if it materially constrains INEOS’ vehicular accessways to the River Tees more than the existing access points as at the date of the Order; or
- (b) given subject to such reasonable requirements as INEOS may require to be made for—
 - (i) the continuing safety, or operational activity of the INEOS operations (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by INEOS to substantiate the need for these requirements);
 - (ii) the continuing safe operation of infrastructure not belonging to INEOS but within or adjacent to the INEOS operations, including reasonable access at all times for inspection,

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maintenance and repair, etc whether that be by INEOS or by any party with rights in the land or infrastructure on or in the land; and

(iii) the requirement for INEOS to have—

- aa. reasonable emergency access with or without vehicles to the INEOS operations at all times;
- bb. reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation of the INEOS operations; and
- cc. reasonable access with or without vehicles to the River Tees at all times.

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(2) Any approval of INEOS required under paragraph 3 including any reasonable requirements required by INEOS under sub-paragraph (1), must be made in writing within a period of 21 days (unless a shorter period is otherwise agreed in writing between the undertaker and INEOS) beginning with the date on which the works details were submitted to INEOS under paragraph 3 or the date on which any further particulars requested by INEOS under paragraph 3 were submitted to INEOS (whichever is the later).

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 4 and any requirements imposed on the approval under sub-paragraph (1).

(4) Where there has been a reference to an arbitrator in accordance with paragraph 9 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 9.

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(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but (unless otherwise agreed in writing between the undertaker and INEOS) in no case less than 28 days before commencing the execution of any restricted works, new works details, instead of the works details submitted, and having done so the provisions of paragraphs 3 to 5 apply to and in respect of the new works details.

Compliance with requirements, etc. applying to the INEOS operations

6. In undertaking any works in relation to the INEOS operations or exercising any rights relating to or affecting the INEOS operations, the undertaker must comply with such reasonable conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the INEOS operations.

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Indemnity

7.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the works referred to in paragraph 3, any damage is caused to the INEOS operations or there is any interruption in any service provided, or in the supply of any goods, by INEOS, the undertaker must—

- (a) bear and pay the cost reasonably incurred by INEOS in making good such damage or restoring the supply; and
- (b) make reasonable compensation to INEOS for any other expenses, loss, damages, penalty or costs incurred by INEOS, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of INEOS, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by INEOS.

(3) INEOS must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent,

has the sole conduct of any settlement or compromises or of any proceedings necessary to resist the claim or demand.

(4) INEOS 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 7 applies.

(5) If requested to do so by the undertaker, INEOS 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) The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by INEOS.

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Costs

8.—(1) Subject to the following provisions of this paragraph 8, the undertaker must pay to INEOS the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by INEOS in, or in connection with—

- (a) undertaking its obligations under this Order including—
 - (i) the execution of any works under this Order including for the protection of the affected apparatus; and
 - (ii) the review and assessment of works details in accordance with paragraph 3;
- (b) the watching of and inspecting the execution of the works approved under paragraph 4; and
- (c) imposing reasonable requirements in accordance with paragraph 5.

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1), INEOS must give prior written notice to the undertaker of the activities to be undertaken and an estimate of the costs or expenses to be incurred.

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Dispute resolution

9. Any difference or dispute arising between the undertaker and INEOS under this Schedule must, unless otherwise agreed in writing between the undertaker and INEOS, be referred to and settled by arbitration in accordance with article 46 (arbitration).

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Applicant's submissions

1. Issue 1 - definition of 'INEOS operations'

- 1.1. The definition of INEOS operations contained in Schedule 24 to the draft DCO comprises all of the operations of INEOS Nitriles that are within the Order Limits of the authorised development. This definition is sufficiently broad enough to protect all of INEOS Nitriles' operations that may be impacted by the authorised development.
- 1.2. It is not appropriate to broaden this definition to include INEOS Nitriles' operations that are outside of the Order Limits as INEOS Nitriles have suggested [REP5-076], as there are no works proposed by the authorised development to these areas. Broadening the Applicant's obligations to these areas will impose additional obligations on the Applicant that are unnecessary to protect INEOS Nitriles' assets from the authorised development, which is the purpose of the protective provisions. The definition of 'INEOS operations' that was contained in the Net Zero Teesside Order 2024 did not contain land that was outside of the Order Limits (see paragraph 97 in Part 9 of Schedule 12).
- 1.3. Including land that is 'adjacent to' the Order Limits, also suggested by INEOS Nitriles, is imprecise, which makes it difficult for the parties to understand the extent of the obligations that are imposed by the protective provisions. This lack of certainty may result in disputes between the parties. The Applicant has however included protection for INEOS Nitriles' access to its adjacent land or operations, as per paragraphs 4 and 5, as the accesses may be crossed by the authorised development and may therefore be directly affected by it.

2. Issue 2 – Works Details definition:

- 2.1. The Applicant has made minor amendments to paragraph (d) of INEOS Nitriles' preferred definition of 'works details' to clarify that the risk assessments that need to be carried out relate to the proposed work.

3. Issue 3 – consent for works (paragraphs 3 and 4)

- 3.1. The breadth of the works to which paragraphs 3-5 apply provides appropriate protection for INEOS Nitriles' operations. The works comprise any part of the authorised development that will have an effect on the operation or maintenance of INEOS Nitriles' operations and necessary and existing access to them or which would otherwise be located on land within INEOS Nitriles' operations. The scope of these works is standard wording contained in protective provisions and is consistent with the scope of works that was contained in the protective provisions for the benefit of INEOS Nitriles in Net Zero Teesside Order (see paragraphs 98-99 in Part 9 of Schedule 12).
- 3.2. Extending the application of these paragraphs to include all works on all land owned or controlled by INEOS Nitriles, as suggested by INEOS Nitriles, is unnecessary as it includes land that will not be affected by the authorised development and land that is not within the Order Limits and therefore is not the subject of any proposed works. The need to seek such consent goes beyond the purpose of protective provisions. However, the Applicant appreciates that INEOS Nitriles' access to land which is adjacent to the Order Limits should be protected and has therefore amended paragraphs 3 and 4 of Schedule 24.

4. Issue 4 – requirements for consent for works relating to access to River Tees (paragraph 5)

- 4.1. At the end of paragraph 4, INEOS Nitriles' preferred protective provisions contains the phrase 'In particular, INEOS Nitriles' vehicular accessways to the River Tees should be no more constrained than the existing access points as at the date of the Order'. The Applicant has incorporated this matter into paragraph 5(1)(a) of Schedule 24 so that INEOS Nitriles can reasonably refuse consent if the proposed works materially constrains INEOS Nitriles' vehicular accessways to the River Tees more than the existing access points as at the date of the Order. This achieves the same aim but is a more appropriate place for the protection to sit.

5. Issue 5 – other requirements for consent for works relating to access to River Tees (paragraph 5)

- 5.1. Paragraph 5 outlines the conditions on which INEOS Nitriles can impose on any consent it provides pursuant to paragraph 4.
- 5.2. The conditions contained in paragraphs 5(b)(i) and (ii) are generally consistent with the conditions contained in the protective provisions for the benefit of INEOS Nitriles in the Net Zero Teesside Order (see paragraphs 100(1)(a)-(b) in Part 9 of Schedule 12). However, there are two differences, and these differences are not contained in INEOS Nitriles' preferred protective provisions:
- 5.2.1. the Applicant has included the phrase '(for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by INEOS Nitriles to substantiate the need for these requirements)' at the end of paragraph 5(b)(i). It is reasonable for INEOS Nitriles to provide a reasoned explanation about any conditions it imposes to avoid material impacts on the INEOS Nitriles' operations. This is so the Applicant can properly understand those conditions and determine if they should be disputed and as reasons may help the Applicant with considering potential alternative solutions to the issue which INEOS Nitriles is seeking to manage.
- 5.2.2. the Applicant has inserted 'reasonable access' in paragraph 5(b)(ii). The Applicant has inserted 'reasonable' as the Applicant cannot guarantee uninterrupted and unimpeded access, given the construction that will be carried out on INEOS Nitriles' land and the current stage of the design of the authorised development. However, the Applicant appreciates that INEOS Nitriles requires access, hence the inclusion of the word 'reasonable.'
- 5.3. Similarly, the conditions contained in paragraphs 5(b)(iii)(aa) and (bb) are generally consistent with the conditions contained in the protective provisions for the benefit of INEOS Nitriles in Net Zero Teesside Order (see paragraphs 100(1)(c) in Part 9 of Schedule 12). However, there is one difference that applies to both paragraphs 5(b)(iii)(aa) and (bb). The Applicant has replaced 'uninterrupted and unimpeded' with 'reasonable'. The Applicant reiterates its submissions made at paragraph 5.2.2 above.
- 5.4. The Applicant has inserted paragraph 5(b)(iii)(cc) at the request of INEOS Nitriles. Again, the Applicant has not replaced 'uninterrupted and unimpeded' (being the wording requested by INEOS Nitriles) with 'reasonable.' The Applicant reiterates its submissions made at paragraph 5.2.2 above.

6. Issue 6 - Compliance with requirements etc applying to the INEOS operations (paragraph 6)

- 6.1. The Applicant has inserted the word 'reasonable' in paragraph 6, so that the Applicant is required to comply with conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the INEOS operations, insofar as they are reasonable.
- 6.2. The Applicant should not be required to comply with any conditions, requirements or regulations that are not reasonable.

7. Issue 7 – indemnity (paragraph 7)

- 7.1. The indemnity clause continued in paragraph 7 of Schedule 24 to the draft DCO provides sufficient protection to INEOS Nitriles as it covers the scope of the damage, service interruption or supply of goods that INEOS Nitriles is most likely to suffer as a result of the works referred to in paragraph 3 of the protective provisions.
- 7.2. The Applicant should not be responsible for paying for any unreasonable costs incurred by INEOS Nitriles, hence the inclusion of 'reasonable' in paragraphs 7(1)(a) and (b). This is also consistent with paragraph 7(6) of the protective provisions. Further, the inclusion of 'reasonableness' in paragraphs 7(1)(a) and (b) is preceded in the protective provisions for

the benefit of INEOS Nitriles in the Net Zero Teesside Order (see paragraph 102(1) of Part 9) as well as various bespoke protective provisions (see, for example paragraphs 56 (Air Products PLC), 86 (CF Fertilisers UK Limited), 94 (Exolum Seal Sands LTD and Exolum Riverside LTD), 157 (NPL Waste Management Limited), 208(2)(b) (Sabic Petrochemicals UK Limited), 224 (Sembcorp Utilities (UK) Limited), 255 (Suez Recycling and Recovery UK Limited), 295 (The Breagh Pipeline Owners), 327 (Huntsman Polyurethanes (UK) Limited), 338(1) (Navigator Terminals) and 400 (TGLP, TGPP and NGPL) of Parts 5, 7-8, 13, 16-17, 19, 21, 23-24 and 28 respectively of Schedule 12 to the Net Zero Teesside Order).

- 7.3. The scope of compensation included in paragraph 7(1)(b) is broad enough to cover the types of expenses, losses etc. INEOS Nitriles is likely to suffer as a result of the damage, service interruption or supply of goods contemplated by paragraph 7(1). This is consistent with the protective provisions for the benefit of INEOS Nitriles in Net Zero Teesside Order (see paragraph 102 in Part 9 of Schedule 12) as well as the examples listed in paragraph 7.2 above. Conversely, the scope of compensation sought by INEOS Nitriles goes far beyond this and is unreasonable.
- 7.4. The Applicant should not be liable for consequential loss, indirect loss or loss of profits as these losses are far too remote from, and lack a causal link to, the damage or interruption to service of supply of goods contemplated by paragraph 7(1). As such, the exclusion in paragraph 7(2)(b) is appropriate. Paragraph 7(2) is preceded in bespoke protective provisions in the Net Zero Teesside Order 2024 (see for example, paragraphs 255(2)(b) (Suez Recycling and Recovery UK Limited) and 295(2)(b) (The Breagh Pipeline Owners) of Parts 19 and 21 respectively of Schedule 12 to the Net Zero Teesside Order).
- 7.5. Paragraph 7(3) balances the need between the Applicant approving claims or demands it is going to pay for, and any burden imposed on INEOS Nitriles for seeking such approvals from the Applicant. It is appropriate for INEOS Nitriles to seek the Applicant's consent before it settles or makes any compromise of any claim or demand, given the Applicant is the party that is ultimately going to pay for such claim or demand. The Applicant requires oversight of and a level of control over claims to be able to manage its liability. Paragraph 7(3) avoids any additional burden placed on INEOS Nitriles by having to continually seek the Applicant's consent before settling or making any compromise, as in the event the Applicant withholds its consent, the Applicant is from then on, responsible for resolving the claim or demand. This also enables the Applicant to have the possibility of minimising its liability, whereas INEOS Nitriles' would have no incentive to do so. This is consistent with the protective provisions for the benefit of INEOS Nitriles in the Net Zero Teesside Order (see for example paragraphs 56(3) (Air Products PLC), 86(3) (CF Fertilisers UK Limited), 94(3) (Exolum Seal Sands LTD and Exolum Riverside LTD), 208(4) (Sabic Petrochemicals UK Limited), 224(3) (Sembcorp Utilities (UK) Limited), 255(3) (Suez Recycling and Recovery UK Limited), 295(3) (The Breagh Pipeline Owners), 327(4) (Huntsman Polyurethanes (UK) Limited) 338(3) (Navigator Terminals) and 400(3) (TGLP, TGPP and NGPL) of Parts 5, 7-8, 16-17, 19, 21, 23-24 and 28 respectively of Schedule 12 to the Net Zero Teesside Order).

8. Issue 8 – costs

- 8.1. The Applicant included paragraph 8 in Schedule 24 at Deadline 7A to reflect the current status of negotiations with INEOS Nitriles. This paragraph provides adequate costs compensation for INEOS Nitriles in relation to the costs it will incur pursuant to paragraphs 3-5.

9. Issue 9 – Dispute Resolution (paragraph 9)

- 9.1. The Applicant does not consider expert determination is an appropriate dispute resolution mechanism. This is because there are various matters arising from these protective provisions that cannot be determined by an expert. For example, disputes regarding the

construction of the tunnel head and pipeline supports which would need to be resolved by a civil engineer, disputes regard the integrity of the pipeline would be resolved by a mechanical engineer and safety related issues would be determined by a chemical engineer. As such, the Applicant considers arbitration is a more appropriate dispute resolution mechanism. Arbitration is consistent with the dispute resolution mechanism outlined in Article 46 of the draft DCO and is used as the dispute resolution mechanism for almost all counterparties in the draft DCO.

- 9.2. If the Examining Authority recommends or the SoS determines that expert determination is the appropriate dispute resolution mechanism, the Applicant considers that paragraph 10 of INEOS Nitriles' preferred protective provisions should be amended in four respects.
- 9.3. Firstly, the Applicant does not consider that the President of the Institute of Civil Engineers is the appropriate body to determine the expert to be appointed for any dispute arising from the protective provisions. The interactions of the authorised development with INEOS Nitriles' operations and the types of disputes that may arise from the protective provisions are much broader than civil engineering issues, and for example, can relate to legal issues. As such, the Applicant considers that a more generalist person, such as the President of the Law Society is the more appropriate body to appoint an expert.
- 9.4. Secondly, the Applicant considers that the matters the expert must consider should include various matters relating to the authorised development. Accordingly, in addition to the matters INEOS Nitriles has identified at paragraph 10(5) of its preferred protective provisions, the Applicant considers that the expert must also consider:
 - 9.4.1. the authorised development being a nationally significant project by virtue of the direction issued pursuant to s 35 of the Planning Act 2008 on 22 December 2022;
 - 9.4.2. the development outcomes sought by the Applicant;
 - 9.4.3. the ability of the Applicant to achieve the outcomes referred to in paragraph 9.4.2 in a timely and cost-effective manner; and
 - 9.4.4. any increased costs on any party as a result of the matter in dispute.
- 9.5. Thirdly, paragraph 10(6) should be amended so it is clear that the expert's decision is enforceable by way of injunction. This ensures the decision is enforceable and will promote the parties' compliance with the decision.
- 9.6. Fourthly, in the event the expert makes a manifest error, the decision should be determined by an arbitrator, rather than the Courts. Arbitration is a quicker and cheaper form of dispute resolution, which is particularly important where the parties have already progressed through expert determination.