

PROTECTIVE PROVISIONS FOR THE PROTECTION OF CF FERTILISERS UK LIMITED

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

2. In this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable CF Fertilisers to undertake its operations on the CF Fertilisers site in a manner not less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by CF Fertilisers;

“CF Fertilisers” means CF Fertilisers UK Limited (company number 03455690), whose registered office is at Head Office Building, Ince, Chester, Cheshire, CH2 4LB and any successor in title to the CF Fertilisers site;

“CF Fertilisers Operations” means the assets and operations within the Order limits vested in CF Fertilisers;

“CF Fertilisers site” means any of the Order land in which CF Fertilisers owns the freehold interest;

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

“restricted works” means any works forming any part of the authorised development that will or may affect the apparatus or access to them including—

- (a) all works within 6 metres of the apparatus;
- (b) the crossing of the apparatus by other utilities; and
- (c) the use of explosives within 400 metres of the apparatus,

whether carried out by the undertaker or any third party in connection with the authorised development;

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of the vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 7.

Precedence of the 1991 Act in respect of apparatus in streets

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and CF Fertilisers are regulated by the provisions of Part 3 (Streets) of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), CF Fertilisers is at liberty at all times to take all necessary access across any such street and 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 prohibition or restriction was in that street.

Removal of apparatus/access

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any operational apparatus is placed or over which access to any operational apparatus is enjoyed or requires that operational apparatus is relocated or diverted, that operational apparatus must not be removed under this Schedule, and any right of CF Fertilisers to maintain that operational apparatus in that land and to gain access to it must not be extinguished (or otherwise made less advantageous), until alternative apparatus (or alternative rights as the case may be) has been constructed (or granted) and is in operation, and access to it has been provided, to the reasonable satisfaction of CF Fertilisers in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any operational apparatus placed in that land, the undertaker must give to CF Fertilisers written notice of that requirement, together with a plan and section 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 CF Fertilisers reasonably needs to remove any of its operational apparatus) the undertaker must, subject to sub-paragraph (3), afford to CF Fertilisers the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and 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 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 or part of such apparatus is to be constructed, CF Fertilisers must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between CF Fertilisers and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) CF Fertilisers must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration), and after the grant to CF Fertilisers 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.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to CF Fertilisers that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by CF Fertilisers, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of CF Fertilisers.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to CF Fertilisers facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted—

- (a) upon such terms and conditions as may be agreed between the undertaker and CF Fertilisers or in default of agreement settled by arbitration in accordance with article 46; and
- (b) in compliance with all health and safety, environmental and regulatory requirements and relevant industry standards.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to CF Fertilisers 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 arbitrator must make such provision for the payment of compensation by the undertaker to CF Fertilisers as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Consent of restricted works under this Schedule

7.—(1) Not less than 28 days before starting the execution of any restricted works the removal of which has not been required by the undertaker under paragraph 5(1), the undertaker must submit to CF Fertilisers the works details for the restricted works and such further particulars as CF Fertilisers may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No restricted works are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by CF Fertilisers.

(3) Any approval of CF Fertilisers required under sub-paragraph (1) must not be unreasonably withheld or delay but may be given subject to such reasonable requirements as CF Fertilisers may require to be made for the alternation or otherwise for the protection of the apparatus, or for securing access to it, and CF Fertilisers is entitled to watch and inspect the execution of those works.

(4) The works referred to in sub-paragraph (1) must be carried out in accordance with the works details approved under sub-paragraph (2) and any requirements imposed on the approval under sub-paragraph (3).

(5) Where there has been a reference to an arbitrator in accordance with paragraph 11 and the arbitrator give approval for the works details, the works referred to in sub-paragraph (1) must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 11.

(6) If CF Fertilisers in accordance with sub-paragraph (3) and in consequence of the restricted works proposed by the undertaker, reasonably requires the removal of any operational apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (7) apply as if the removal of the operational apparatus had been required by the undertaker under paragraph 5(1).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time, but in no case less than 28 days before commencing the execution of any restricted works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to CF Fertilisers notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) insofar as is reasonably practicable in the circumstances.

Notices

8. Any notices to be served on the undertaker or CF Fertilisers must be served in writing on the registered office address and on the General Counsel at CF Fertilisers, Ince, Chester, Cheshire, CH2 4LB.

Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to CF Fertilisers the reasonable expenses incurred by it in, or in connection with, the removal, inspection, alteration or protection of any operational apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(1).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated and agreed 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, 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 article 46 (arbitration) to be necessary,

then, if such placing involves cost in the construction of works under this Schedule exceeding which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, of at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to CF Fertilisers by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) The provisions of sub-paragraph (3) shall only apply where the alteration is at the election of CF Fertilisers and not where such change to the existing type, capacity, dimensions or depth is as a result of industry requirements, legislation or environmental or health and safety considerations.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 5(1); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to CF Fertilisers in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on CF Fertilisers any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

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

- (a) bear and pay the cost reasonably incurred by CF Fertilisers in making good such damage or restoring the supply; and
 - (b) make reasonable compensation to CF Fertilisers for any other expenses, loss, damages, penalty or costs incurred by CF Fertilisers, 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 CF Fertilisers, its officers, employees, servants, contractors or agents; or
 - (b) any indirect or consequential loss or loss of profits by CF Fertilisers.
- (3) CF Fertilisers 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 compromise or of any proceedings necessary to resist the claim or demand.
- (4) CF Fertilisers 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 10 applies.
- (5) If requested to do so by the undertaker, CF Fertilisers 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 10 for claims reasonably incurred by CF Fertilisers.

Arbitration

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

Applicant's submissions

1. General

- 1.1. In preparing Schedule 27 to the draft DCO [REP7-018] (DCO PPs), the Applicant has largely followed the protective provisions for the benefit of CF Fertilisers (CF) that are contained in Part 7 of Schedule 12 to the Net Zero Teesside Order 2024 (NZT CF PPs). The Applicant has updated the NZT CF PPs to reflect the interactions between the authorised development and CF's operations and also to reflect the issues that have been raised in submissions by CF during examination.
- 1.2. The Applicant considers that the DCO PPs appropriately and adequately protect CF's current and future operations and assets and address CF's concerns regarding access and safety.

2. Issue 1 - Compulsory acquisition

- 2.1. The Applicant understands that CF has concerns regarding the compulsory acquisition powers that are contained in the draft DCO.
- 2.2. These powers are required in order to ensure the delivery of the authorised development. These powers are required to ensure the authorised development can be constructed, operated and maintained and also to ensure that the authorised development's nationally significant public benefits can be realised, including supporting the Government's policies in relation to the timely delivery of new generating capacity and achieving ambitious net zero targets.
- 2.3. With the controls in place in the Protective Provisions in respect of controlling impacts of works across CF's site, the impacts to CF's operations, and its ability to be developed, are able to be controlled. With these measures in place, the Applicant ensures that there is no realistic prospect that the exercise of compulsory land powers would have a detrimental impact on the ability of CF's site to be developed, or CF's apparatus and operations to be protected.
- 2.4. The Applicant needs the ability to then deliver those approved works, utilising the land shown on the Order limits. In this context, the Applicant considers that the balance lies clearly in favour of the grant of compulsory acquisition powers, taking into account the measures to avoid, minimise or mitigate the effects of such powers, and noting the substantial public benefits that it considers exist for the authorised development.
- 2.5. The Applicant also refers to the justification for compulsory acquisition powers that is outlined in the Statement of Reasons [CR1-013].

3. Issue 2 - Safeguarding CF's current and future operations

- 3.1. The Applicant understands that CF has concerns regarding access to its site to ensure that its current and future operations are protected. The Applicant considers that the DCO PPs provide adequate protection for CF's current and future operations, including access.
- 3.2. Paragraph 5 of the DCO PPs requires the Applicant to provide alternative apparatus or access rights in the event the Applicant requires CF's operational apparatus to be relocated or diverted.
- 3.3. Paragraph 7 of the DCO PPs also prevents the Applicant from carrying out 'restricted works' without CF's approval. 'Restricted works' are

any works forming any part of the authorised development that will or may affect the apparatus or access to them including—

- (a) all works within 6 metres of the apparatus;*
- (b) the crossing of the apparatus by other utilities; and*
- (c) the use of explosives within 400 metres of the apparatus,*

whether carried out by the undertaker or any third party in connection with the authorised development;

- 3.4. CF can impose any reasonable requirements on the restricted works for the protection of the apparatus, or for securing access to it. CF Fertilisers is also entitled to watch and inspect the execution of those works. The restricted works must be carried out in accordance with CF's approval, or where the matter is determined by an arbitrator, in accordance with the arbitrator's decision.
 - 3.5. Paragraph 9 of the DCO PPs requires the Applicant to pay CF for the reasonable expenses incurred in connection with the removal, inspection, alteration or protection of any operational apparatus, as well as the construction of any alternative apparatus that is required as a result of paragraph 5(1).
 - 3.6. Paragraph 10 of the DCO PPs states that if any damage is caused to CF Fertilisers' Operations, or there is any interruption in any service provided, or in the supply of any goods, by CF Fertilisers as a result of the restricted works, the Applicant must:
 - 3.6.1. bear and pay the cost reasonably incurred by CF Fertilisers in making good such damage or restoring the supply; and
 - 3.6.2. make reasonable compensation to CF Fertilisers for any other expenses, loss, damages, penalty or costs incurred by CF Fertilisers, by reason or in consequence of any such damage or interruption.
 - 3.7. With these protections, the Applicant considers that CF's concerns regarding safety, access and protection of its current and future operations are safeguarded.
- 4. Issue 3 - Other commercial matters**
- 4.1. There are other commercial matters that the parties are discussing through private negotiations. The parties have agreed on the principles of these commercial matters which will be addressed through a side agreement. The Applicant expects to finalise the side agreement with CF shortly after the close of examination. They are not matters which require to be dealt with in the DCO PPs in order to protect CF.