

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NORTHERN POWERGRID (NORTHEAST) PLC

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

2. In this Schedule—

“alternative apparatus” means alternative and / or replacement apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the 1989 Act), belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to such apparatus;

“functions” includes powers and duties;

“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;

“Northern Powergrid” means Northern Powergrid (Northeast) Plc (company number 02906593), whose registered office is at Lloyds Court, 78 Grey Street, Newcastle upon Tyne, NE1 6AF; and

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include any measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impact of the works on the apparatus or Northern Powergrid’s undertaking within the Order Limits.

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (Street works in England and Wales) 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), Northern Powergrid 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.

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid’s apparatus is relocated or diverted, that apparatus must not be removed under this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement which shall include rights to retain and subsequently maintain the apparatus being replaced or diverted for the lifetime of that alternative apparatus, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(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 apparatus placed in that land, the undertaker must give to Northern Powergrid 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 Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid 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, Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) 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 Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 16.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 16, and after the grant to Northern Powergrid 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.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Northern Powergrid 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 upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with paragraph 16.

(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 Northern Powergrid 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 Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than ninety days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) 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 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 35 days before commencing the execution of any 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.

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

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid the reasonable and proper expenses incurred by Northern Powergrid—

- (a) in, or in connection with, the inspection, removal, alteration or protection of any 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(2); and
- (b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all, provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 5(1) having first decommissioned such apparatus.

(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 after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Schedule has nil value, no sum will be deducted from the amount payable under this sub-paragraph (1).

(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 paragraph 16 to be necessary, then, if such placing involves cost in the construction or 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 Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker, provided that the apparatus is the lowest cost alternative available that fulfils the requirements.

(4) 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(2); 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.

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

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage and restoring the supply; and
- (b) make reasonable compensation to Northern Powergrid for any other expenses, loss, damages, penalty or costs incurred by Northern Powergrid, 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 Northern Powergrid, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by Northern Powergrid.

(3) Northern Powergrid 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) Northern Powergrid 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 9 applies.

(5) If requested to do so by the undertaker, Northern Powergrid 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 9 for claims reasonably incurred by Northern Powergrid.

10. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

11. Without prejudice to the generality of the protective provisions in this Schedule, Northern Powergrid must from time to time submit to the undertaker estimates of reasonable costs and expenses it expects to incur in relation to the implementation of any diversions or relocation of apparatus contemplated under this Schedule without limitation—

- (a) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker under paragraph 8;
- (b) costs incurred in fulfilling its obligations in paragraph 5(3);
- (c) fees incurred in settling and completing and registering any documentation to secure rights for its diverted or relocated apparatus; and
- (d) costs and expenses of contractors required to undertake any works for which Northern Powergrid is responsible and of purchasing the necessary cabling and associated apparatus,

provided that Northern Powergrid must use reasonable endeavours to minimise to a proper and reasonable level any charges, costs, fees and expenses to the extent that they are incurred.

12. Northern Powergrid and the undertaker must use their reasonable endeavours to agree the amount of any estimates submitted by Northern Powergrid under paragraph 11 within 15 days following receipt of such estimates by the undertaker. The undertaker must confirm its agreement to the amount of such estimates in writing and must not unreasonably withhold or delay such agreement. If parties are unable to agree the amount of an estimate, it will be dealt with in accordance with paragraph 16.

13. Work in relation to which an estimate is submitted must not be commenced by Northern Powergrid until that estimate is agreed with the undertaker in writing and a purchase order up to the value of the approved estimate has been issued by the undertaker to Northern Powergrid and an easement for the routes of the apparatus has been granted to Northern Powergrid pursuant to paragraph 11 for the benefit of its statutory undertaking.

14. If Northern Powergrid at any time becomes aware that an estimate agreed is likely to be exceeded, it must forthwith notify the undertaker and must submit a revised estimate of the relevant costs and expenses to the undertaker for agreement.

15.—(1) Northern Powergrid may from time to time and at least monthly from the date of this Order issue to the undertaker invoices for costs and expenses incurred up to the date of the relevant invoice, for the amount of the relevant estimate agreed.

(2) Invoices issued to the undertaker for payment must—

- (a) specify the approved purchase order number; and
- (b) be supported by timesheets and narratives that demonstrate that the work invoiced has been completed in accordance with the agreed estimate.

(3) The undertaker is not responsible for meeting costs or expenses in excess of an agreed estimate, other than where agreed under paragraph 14 above or determined in accordance with paragraph 16.

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

17. Prior to carrying out any works within the Order limits Northern Powergrid must give written notice of the proposed works to the undertaker, such notice to include full details of the location of the proposed works, their anticipated duration, access arrangements, depths of the works, and any other information that may impact upon the works consented by the Order.

Applicant's submissions

1. Issue 1 - Impact of authorised development on Northern Powergrid's infrastructure

- 1.1. The Applicant understands that Northern Powergrid (NPG) has concerns regarding the impact of the authorised development on NPG's infrastructure.
- 1.2. The Applicant considers that the protective provisions contained in Schedule 28 of the draft DCO [REP7-018] (DCO PPs) adequately address NPG's concern.
- 1.3. Paragraph 4 safeguards NPG's access across any street to enable NPG to carry out all necessary works to maintain its apparatus.
- 1.4. Paragraph 5 requires that alternative apparatus must be constructed and in operation (including necessary land rights) before NPG's apparatus is removed. The alternative apparatus must be constructed in a manner that is agreed between the parties, or settled by arbitration.
- 1.5. Paragraph 7(1) of the DCO PPs requires the Applicant to seek NPG's consent before it carries out any works that are near to, or will or may affect NPG's apparatus (**Relevant Works**). NPG can impose reasonable requirements or seek alternations to the Relevant Works to protect NPG's apparatus and access to that apparatus. The Relevant Works must be constructed in accordance with NPG's approval and reasonable requirements. There is an exception to this requirement in case of emergency, but the Applicant still must provide NPG notice as soon as is reasonably practicable. The Applicant must also provide a plan, section and description of those works subsequently and must comply with NPG's approval and reasonable requirements insofar as is reasonable practicable in the circumstances.
- 1.6. As such, paragraphs 4, 5 and 7 address NPG's concerns regarding the interference with NPG's existing apparatus. These are important provisions in terms of the section 127 and 138 tests, since they ensure that the statutory undertaking is protected, with paragraph 5 in particular ensuring that the existing or replacement apparatus will always be in place and providing protection in the event that the Applicant did need to use compulsory acquisition powers.
- 1.7. Further, paragraph 9(1) states that that if any damage is caused to NPG's apparatus or property, or there is any interruption in any service provided by NPG as a result of the construction of the alternative apparatus, the Applicant must:
 - 1.7.1. bear and pay the cost reasonably incurred by NPG in making good such damage and restoring the supply; and
 - 1.7.2. make reasonable compensation to NPG for any other expenses, loss, damages, penalty or costs incurred by NPG, by reason or in consequence of any such damage or interruption.
- 1.8. The Applicant's liability under paragraph 9(1) does not include:
 - 1.8.1. any damage or interruption to the extent that it is attributable to the act, neglect or default of NPG, its officers, employees, servants, contractors or agents; or
 - 1.8.2. any indirect or consequential loss or loss of profits by NPG.
- 1.9. The Applicant considers that these protections afforded to NPG address its concerns regarding the impact of the authorised development on NPG's infrastructure.

2. Issue 2 – Compulsory acquisition

- 2.1. NPG's relevant representation [RR-027] raises concerns regarding compulsory acquisition.
- 2.2. The compulsory acquisition powers contained in the draft DCO 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. The controls in place in the Protective Provisions in respect of impacts to NPG's apparatus and operations provide sufficient protection. 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 NPG's apparatus and operations.
- 2.4. The Applicant needs the ability to then deliver the authorised development, 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 3 – costs of relocating apparatus

- 3.1. The Applicant understands that NPG is concerned about the potential costs of relocating apparatus.
- 3.2. Paragraph 8(1) of the DCO PPs requires the Applicant to repay NPG the reasonable and proper expenses:
 - 3.2.1. incurred in connection with 'the inspection, removal, alteration or protection of any 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(2)'; and
 - 3.2.2. in assessing and preparing a design for its apparatus to address and accommodate the proposals of the Applicant.
- 3.3. Paragraph 8 includes standard deductions from the amount the Applicant pays NPG to address betterment. There is an exception to these reductions where it is not possible to obtain the existing type of operations, capacity, dimensions or place at the existing depth because of project time limits and/or supply issues. In this scenario, the Applicant must pay the full costs, provided that the apparatus installed is the lowest cost alternative available that fulfils the requirements.
- 3.4. Paragraph 11-15 sets out how the parties submit and agree on the estimate of NPG's reasonable costs and expenses it expects to incur in relation to the implementation of any diversions or relocation of apparatus contemplated.
- 3.5. Accordingly, the Applicant considers that NPG's concerns regarding the costs of relocating apparatus are addressed.

4. Issue 4 – Inclusion of NPG's standard protective provisions

- 4.1. NPG's relevant representation [RR-027] notes that the draft DCO did not contain NPG's standard protective provisions. At deadline 5, the Applicant included bespoke protective provisions for the benefit of NPG [REP5-006]. At deadline 7A, the Applicant has updated the protective provisions contained in Schedule 28 to the draft DCO. These protective provisions are largely consistent with the protective provisions contained in the Net Zero Teesside Order 2024 (see Part 12 of Schedule 12).