

PART 6

FOR THE PROTECTION OF EXOLUM PIPELINE SYSTEM LTD

Application

68. For the protection of Exolum the following provisions, unless otherwise agreed in writing at any time between the undertaker and Exolum, have effect.

Interpretation

69. In this Part of this Schedule —

“alternative apparatus” means alternative apparatus adequate to enable Exolum to fulfil its functions as a pipe-line operator in a manner no less efficient than previously;

“apparatus” means the pipe-line and storage system owned or maintained by Exolum and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“Exolum” means Exolum Pipeline System Ltd and any successor in title;

“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;

“pipe-line” means the whole or any part of a pipe-line belonging to or maintained by Exolum and includes any ancillary works and apparatus; all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers; and such legal interest and benefit of property rights and covenants as are vested in Exolum in respect of those items;

“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;

“specified work” means any work which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus; and

“working day” means any day other than a Saturday, Sunday or English bank or public holiday.

Acquisition of apparatus

70. Irrespective of any provision in this Order or anything shown on the land plans—

(a) the undertaker must not acquire any apparatus or obstruct or render less convenient the access to any apparatus, otherwise than by agreement with Exolum; and

(b) any right of Exolum to maintain, repair, renew, adjust, alter or inspect any apparatus must not be extinguished by the undertaker until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Exolum.

Removal of apparatus and rights for alternative apparatus

71.—(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 any apparatus is relocated or diverted, that apparatus must not be removed by the undertaker and any right of Exolum to maintain and use 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, to the reasonable satisfaction of Exolum.

(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, it must give Exolum not less than 28 days’ 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 Exolum

reasonably needs to remove any apparatus) the undertaker must, subject to subparagraph (3), afford to Exolum 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 subparagraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker must afford to and, if necessary, acquire for the benefit of Exolum the necessary facilities and rights (equivalent to those currently enjoyed by Exolum) for the construction, maintenance and use of the alternative apparatus and access to it.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by arbitration in accordance with article 54 (arbitration).

(5) Exolum must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with article 54, and after the grant to Exolum of any such facilities and rights as are referred to in sub-paragraphs (2) and (3), proceed as soon as reasonably practicable using all reasonable endeavours 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) Irrespective of sub-paragraph (5), if the undertaker gives notice in writing to Exolum that it desires itself to execute any work, or part of any work in connection with the construction, removal or decommissioning of apparatus in the land of the undertaker or the construction of alternative apparatus, that work, instead of being executed by Exolum, must be executed by the undertaker without unnecessary delay under the superintendence, if required, and to the reasonable satisfaction of Exolum.

(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 3000 millimetres of the apparatus without Exolum's consent.

Facilities and rights for alternative apparatus

72.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Exolum 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 are to be granted upon such terms and conditions as may be agreed between the undertaker and Exolum or in default of agreement settled by arbitration in accordance with article 54 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic on the highway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted.

(3) 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 Exolum 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 Exolum as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

73.—(1) Unless a shorter period is otherwise agreed in writing between the undertaker and Exolum, not less than 28 days before commencing any specified work in relation to apparatus the removal of which has not been required by the undertaker under sub-paragraph 72(2), the undertaker must submit to Exolum a plan of the works to be executed.

(2) The specified work must be executed only in accordance with the plan submitted under subparagraph (1) and approved by Exolum in accordance with

such reasonable requirements as may be made in accordance with sub-paragraph (4) by Exolum for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and Exolum is entitled to watch and inspect the execution of the specified work.

(4) Any requirements made by Exolum under sub-paragraph (3) must be made within a period of 14 days (unless a shorter period is otherwise agreed in writing between the undertaker and Exolum) beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(5) If Exolum 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, this Part of this Schedule applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph 89(2).

(6) 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 Exolum) in no case less than 28 days before commencing any specified work, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Exolum notice of the works it intends to carry out to remedy the emergency together with a plan as soon as is reasonably practicable and must comply with subparagraph (2) in so far as is reasonably practicable in the circumstances.

(8) In relation to any specified work, the plan to be submitted to Exolum under sub-paragraph (1) must include a material statement describing—

- (a) the exact position of the work;
- (b) the level at which the work is to be constructed or renewed;
- (c) the manner of its construction or renewal;
- (d) the position of any apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to the apparatus.

Cathodic protection testing

74. Where in the reasonable opinion of the undertaker—

- (a) the authorised development might interfere with the existing cathodic protection forming part of a pipe-line; or
- (b) a pipe-line might interfere with the proposed or existing cathodic protection forming part of the authorised development,

Exolum and the undertaker must co-operate in undertaking the tests which the undertaker considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

Expenses

75.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Exolum the reasonable costs and expenses incurred by Exolum in, or in connection with—

- (a) the inspection, removal, alteration or protection of any apparatus; or
- (b) the construction of any new apparatus; or
- (c) the watching and inspecting the execution of any specified work; or
- (d) imposing reasonable requirements for the protection or alteration of apparatus,

which may reasonably be required in consequence of the execution of any such works as are required under this Schedule.

(2) The scrap value of any apparatus removed under the provisions of this Part of Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part 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 (except where this has been solely due to using the nearest currently available type); 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 article 54 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of 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 Exolum by virtue of sub-paragraph (1) is reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus must 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 must 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 Exolum 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 7 years and 6 months earlier so as to confer on Exolum 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.

Damage to property and other losses

76.—(1) Subject to the following provisions of this paragraph, the undertaker must—

(a) pay Exolum for all loss, damage, liability, costs and expenses reasonably suffered or incurred by Exolum for which Exolum is legally liable as a result of legally sustainable claims brought against Exolum by any third party solely arising out of the carrying out of any relevant works and any protective building works;

(b) pay the cost reasonably incurred by Exolum in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any relevant works or protective building work; (2) The fact that any act or thing may have been done by Exolum on behalf of the undertaker or in accordance with a plan approved by Exolum or in accordance with any requirement of Exolum or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(c) pay the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply through its pipeline and make reasonable compensation to Exolum for any other expenses, losses, damages, penalty

or costs incurred by Exolum by reason or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works and any protective building works.

(2) Irrespective of anything to the contrary elsewhere in this Part of this Schedule—

(a) the undertaker and Exolum must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers as a result of the other's negligence or breach of this Part of this Schedule; and

(b) neither the undertaker nor Exolum are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this Part of this Schedule or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.

(3) Exolum must give to the undertaker reasonable notice of any claim or demand to which this paragraph 76 applies. The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. Exolum must not compromise or settle any such claim or make any admission which might be prejudicial to the claim. Exolum must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing.

(4) In this paragraph—

“protective building works” means the exercise by the undertaker of the powers conferred by article 22 (protective works to buildings); and

“relevant works” means such of the authorised development as—

(a) does, will or is likely to affect any apparatus; or

(b) involves a physical connection or attachment to any apparatus.

Co-operation and reasonableness

77.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker requires the removal of apparatus under this Part of this Schedule or Exolum makes requirements for the protection or alteration of apparatus under this Part of this Schedule, the undertaker must use its best endeavours to co-ordinate 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 Exolum's undertaking and Exolum must use its best endeavours to co-operate with the undertaker for that purpose.

(2) The undertaker and Exolum must act reasonably in respect of any given term of this Part of this Schedule and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by this Part of this Schedule it must not be unreasonably withheld or delayed.

Miscellaneous

78. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Exolum in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this Part of this Schedule. In the case of any inconsistency, the provisions of this Order, including this Part of this Schedule, prevail.

Emergency circumstances

79. —(1) The Promoter acknowledges that Exolum provides services to Her Majesty's Government, using its apparatus, which may affect any works to be carried under this Order.

(2) In the following circumstances, Exolum may on written notice to the Promoter immediately suspend all works that necessitate the stopping or suspending of the supply of product through any apparatus under this Order and Exolum shall not be in breach of its obligations to proceed:

(a) circumstances in which, in the determination of the Secretary of State, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or

(b) circumstances in which a request has been received, and a decision to act upon such request has been taken, by Her Majesty's Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or

(c) circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by Her Majesty's Government or the Secretary of State; or

(d) any circumstances identified as such by the COBRA committee of Her Majesty's Government (or any successor committee thereof); or

(e) any situation, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas, in connection with which the Secretary of State requires fuel capacity.

(3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which shall include costs of demobilising and remobilising any workforce, and any costs to protect Exolum's apparatus "mid-works") to account for the suspension.

(4) Exolum shall not be liable for any costs, expenses, losses or liabilities the Promoter incurs as a result of the suspension of any activities under this paragraph or delays caused by it.