RWE

Tween Bridge Solar Farm

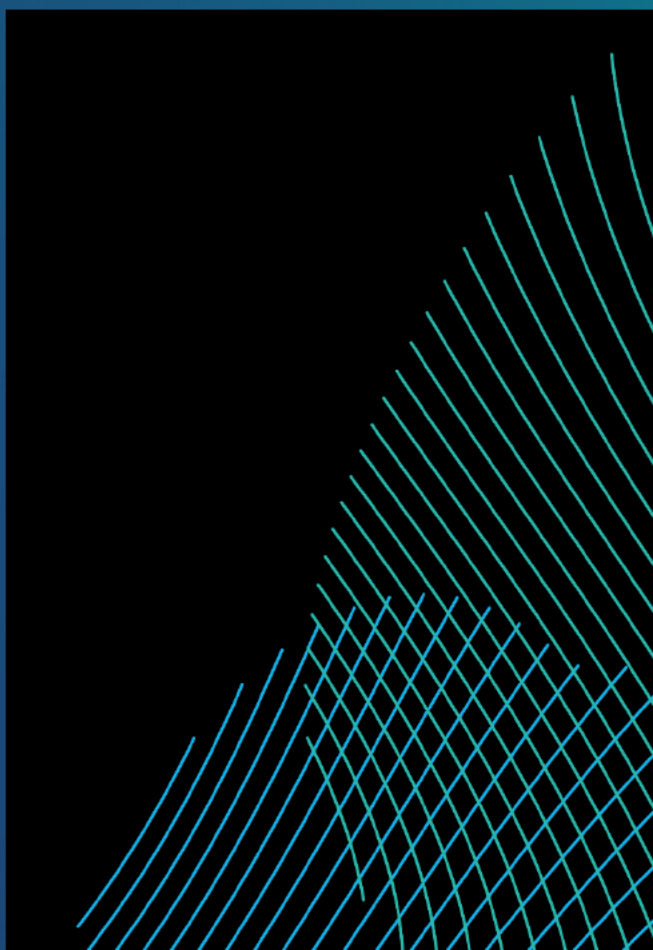
8.23.3 Justification for the Applicant's preferred protective provisions - Annex C Applicant's Without Prejudice Form for Protective Provisions for Exolum

Planning Act 2008
Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

Document Reference: 8.23.3

Deadline 8 October 2026

Revision 1



SCHEDULES

SCHEDULE 14
PROTECTIVE PROVISIONS

PART 6

Key
Agreed text in black
[Applicant's preferred position in red (where not agreed with Exolum)]
[Exolum's preferred position in blue (where not agreed with the Applicant)]

FOR THE PROTECTION OF EXOLUM PIPELINE SYSTEM LTD

Application

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

Interpretation

2. In this Part of this Schedule, the following terms have the following meanings—

"Additional Rights" means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of retained Apparatus including any restrictions on the landowner and occupiers for the protection of the retained Apparatus and to allow Exolum to perform its functions;

"Alternative Apparatus" means alternative apparatus adequate to enable Exolum to fulfil its functions as a pipeline operator in a manner not less efficient than previously;

"Alternative Rights" means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of Alternative Apparatus including any restrictions on the landowner and occupiers for the protection of the Alternative Apparatus and to allow Exolum to perform its functions;

"Apparatus" means the pipeline and storage system and any ancillary apparatus owned and/or operated by Exolum and includes—

(a) any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

(b) any ancillary works, all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers; and

(c) such legal interest, and benefit of property rights and covenants as are vested in in respect of these items, excluding any rights of access to or from the Apparatus,

and, where the context allows, includes Alternative Apparatus;

"Application" means the application to the Secretary of State for the Order made by the undertaker under the Planning Act 2008 on 28 August 2025;

"Authorised Development" has the same meaning as that given in article 2(1) (interpretation) and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

"Commence" has the same meaning as that given in article 2(1) (interpretation) (and commencing must be construed accordingly);

"Exolum" means Exolum Pipeline System Ltd (company number 09497223) and for the purpose of enforcing the benefit of any provisions in this Schedule, any group company of Exolum Pipeline System Ltd and in all cases any successor in title;

"Expert" is a person appointed in accordance with paragraph 14 (dispute resolution) to resolve a dispute under this Schedule;

"functions" includes powers, duties and commercial undertaking;

"in" in a context referring to Apparatus in land includes a reference to Apparatus under, over or upon land;

"Order" means the order granting development consent, made by the Secretary of State and brought into force following the Application under the Planning Act 2008;

"parties" means the undertaker and Exolum and "party" is to be construed accordingly;

"Plan" includes all designs, drawings, sections, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to allow Exolum to assess the relevant works to be executed properly and sufficiently and in particular must describe—

(a) the exact position of the works;

(b) the level at which the works are proposed to be constructed or renewed;

(c) the manner of the works' construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of the affected Apparatus and any other apparatus belonging to another undertaker;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regime;

(g) details of the proposed method of working and timing of execution of works; and

(h) details of vehicle access routes for construction and operational traffic;

"Protective Works" means works for the inspection and protection of Apparatus;

"Restricted Works" means any works that will or may affect any Apparatus including—

(i) all works within 15 metres measured in any direction of any Apparatus including embankment works, those that involve a physical connection or attachment to any Apparatus and any new crossings of the Apparatus;

(j) the use of explosives within 400 metres of any Apparatus;

(k) piling, undertaking of a 3D seismic survey or the sinking of boreholes within 30 metres of any Apparatus; and

(l) all works that impose a load directly upon the Apparatus, wherever situated,

whether carried out by the undertaker or any third party in connection with the Authorised Development; and

"Working Day" means any day other than a Saturday, Sunday or English bank or public holiday.

Acquisition of Apparatus

3.—(1) Regardless of any other provision in the Order—

(a) the undertaker must not, otherwise than by agreement with Exolum, acquire any Apparatus;

(b) where the undertaker acquires the freehold of any land in which Exolum holds an interest or Exolum's rights or interests in land are otherwise extinguished or restricted pursuant to the Order, the undertaker must afford to or secure for Exolum such rights in land in substitution for any right which would be extinguished by that acquisition (the replacement rights). These replacement rights must be granted upon substantially the same terms and conditions as the right to be extinguished and not less favourable than the right to be extinguished, unless otherwise agreed between the undertaker and Exolum, and must be granted or put in place contemporaneously with the extinguishment of the right which they replace;

(c) the undertaker must not, otherwise than in accordance with this Schedule—

(i) obstruct or render less convenient the access to any Apparatus;

(ii) interfere with or affect Exolum's ability to carry out its functions as an oil pipeline operator;

(iii) require that Apparatus is relocated or diverted; or

(iv) remove or require to be removed any Apparatus;

(d) any right of Exolum to maintain, repair, renew, adjust, alter or inspect Apparatus may not be extinguished until any necessary Alternative Apparatus has been constructed, it is in operation and the Alternative Rights have been granted, all to the reasonable satisfaction of Exolum; and

(e) any right of Exolum to access the Apparatus must not be extinguished until necessary alternative access has been provided to Exolum's reasonable satisfaction.

(2) Prior to the carrying out of any Restricted Works or any works authorised by this Order that will affect the Appartus, and if required by Exolum, the parties shall use their reasonable endeavours to negotiate and enter into such deeds of consent (crossing consent) and (if necessary) variations to the existing rights upon such terms and conditions as may be agreed between Exolum and the undertaker acting reasonably and which must be no less favourable on the whole to Exolum than this Schedule, and the undertaker will use reasonable endeavours to procure and / or secure the consent and entering into of such deeds and variations by all other third parties with an interest in land within the Order limits at that time who are affected by such works.

(3) Where the undertaker acquires land which is subject to any existing rights held by Exolum and the provisions of paragraph 5 (facilities and rights for alternative apparatus) do not apply, the undertaker must—

(a) retain any notice of the existing rights held by Exolum on the title to the relevant land when registering the undertaker's title to such acquired land; and

(b) provide up to date official entry copies to Exolum within 20 working days of receipt of such up to date official entry copies.

(4) Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which Exolum has an easement, right, asset, interest or Apparatus—

(a) where reasonably necessary, Exolum may exercise its rights to access such land—

(i) in an emergency, without notice but in all such instances Exolum will notify the undertaker as soon as reasonably practicable and until service of such notice, entry will be at Exolum's own risk; and

(ii) in non-emergency circumstances, having first given prior written notice to the undertaker in order to allow the parties to agree the timing of their respective works during the period of temporary possession; and

(b) the undertaker may not remove or in any way alter Exolum's rights in such land, unless in accordance with the provisions of this Order; and

(c) Exolum will comply with all reasonable health and safety requirements that are notified to Exolum in writing (including any requirements applicable to the undertaker under the Construction, Design and Management Regulations 2015).

Removal of Apparatus and Rights for Alternative Apparatus

4.—(1) If, having used all reasonable endeavours to implement the Authorised Development without the removal of any Apparatus—

(a) the undertaker reasonably requires the removal of any Apparatus; or

(b) Exolum reasonably requires the removal of any Apparatus,

then the relevant party must give written notice of that requirement to the other.

(2) The parties must use all reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of the Alternative Apparatus to be provided or constructed.

(3) The undertaker must afford to Exolum the necessary facilities and rights for the construction of Alternative Apparatus and subsequently the grant of Alternative Rights in accordance with paragraph 5 (facilities and rights for alternative apparatus).

(4) Any Alternative Apparatus is to be constructed in land owned by the undertaker or in land in respect of which Alternative Rights have been or are guaranteed to be granted to Exolum. The Alternative Apparatus must be constructed in such manner and in such position or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by expert determination in accordance with paragraph 14 (dispute resolution).

(5) After the details for the works for Alternative Apparatus to be provided or constructed have been agreed or settled by expert determination in accordance with paragraph 14 (dispute resolution), and after the grant to Exolum of any such facilities and rights as are referred to in sub-paragraph (3), Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Alternative

Apparatus and subsequently to remove (or if agreed between the parties to allow the undertaker to remove) any redundant Apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) The following sub-paragraphs (7) and (8) only apply if—

(a) Exolum fails to comply with its obligations under sub-paragraph (5) to remove any redundant Apparatus; and

(b) the undertaker has served notice on Exolum specifying the default; and

(c) Exolum has failed to remedy the default within 28 days.

(7) In the circumstances set out in sub-paragraph (6), if the undertaker then gives notice in writing to Exolum that it will remove the redundant Apparatus, that work, instead of being executed by Exolum, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Exolum.

(8) Nothing in sub-paragraph (7) 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 unless that Apparatus is redundant and disconnected from Exolum's remaining system.

Facilities and Rights for Alternative Apparatus

5.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Exolum facilities and rights for the construction of Alternative Apparatus and the grant of Alternative Rights, 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 Exolum in accordance with this Schedule or in default of agreement settled by expert determination in accordance with paragraph 14 (dispute resolution).

(2) Alternative Rights must be granted before any Alternative Apparatus is brought into operation.

(3) The parties agree that the alternative rights shall be granted as far as practicable substantially in the form of Exolum's precedent from time to time as amended by written agreement between the parties acting reasonably or such other form of agreement as the parties otherwise agree acting reasonably.

(4) Nothing in this Schedule or contained in the Alternative Rights shall require Exolum to divert or remove any Alternative Apparatus.

(5) 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 Expert 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 Expert will make such provision for the payment of compensation by the undertaker to Exolum as appears to the Expert to be reasonable having regard to all the circumstances of the particular case.

Retained Apparatus and Alternative Apparatus: protection

6.—(1) Before commencing the execution of any Restricted Works, the undertaker must submit to Exolum a Plan of the works to be executed and any other information that Exolum may reasonably require to allow Exolum to assess the works.

(2) No Restricted Works are to be commenced until the Plan to be submitted to Exolum under sub-paragraph (1) has been approved by Exolum in writing and are to be carried out only in accordance with the details submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be notified to the undertaker in writing in accordance with sub-paragraph (3) by Exolum.

(3) Any approval by Exolum of the Plan of works submitted under sub-paragraph (1) must not be unreasonably withheld or delayed.

(4) Exolum must communicate its approval or refusal of the plans within 56 days of the date of submission of the plan under sub-paragraph (1) and any approval of the Plan of works may be given subject to such reasonable requirements as Exolum may require to be made for—

(a) the continuing safety and operational viability of any Apparatus; and

(b) the requirement for Exolum to have reasonable access with or without vehicles to inspect, repair, replace, maintain and ensure the continuing safety and operation or viability of any Apparatus,

providing such reasonable requirements are notified to the undertaker in writing.

(5) Exolum will be entitled to watch and inspect the execution of Restricted Works at any time.

(6) Where reasonably required by either party, in view of the complexity of any proposed works, timescales, phasing or costs, the parties must with due diligence and good faith negotiate a works agreement for the carrying out of Protective Works or the installation of Alternative Apparatus.

(7) If in consequence of the works notified to Exolum by the undertaker under sub-paragraph (1), the circumstances in paragraph 4(2) (removal of apparatus and rights for alternative apparatus) apply, then the parties will follow the procedure in paragraph 4(2) onwards.

(8) Nothing in sub-paragraphs (1) to (7) precludes the undertaker from submitting prior to the commencement of works to protect retained Apparatus or to construct Alternative Apparatus (unless otherwise agreed in writing between the undertaker and Exolum) a new Plan, instead of the Plan previously submitted, in which case the parties will re-run the procedure from sub-paragraph (1) onwards.

(9) Where Exolum reasonably requires Protective Works, the parties must use all reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of any physical features to be provided or constructed.

(10) The undertaker must afford to Exolum the necessary facilities and rights for the construction of Protective Works and subsequently the grant of Additional Rights in accordance with paragraph 5 (facilities and rights for alternative apparatus).

(11) Any Protective Works are to be constructed in land owned by the undertaker or in land in respect of which Additional Rights have been or are guaranteed to be granted to Exolum. The Protective Works must be constructed in such manner and in such position or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by expert determination in accordance with paragraph 14 (dispute resolution).

(12) After the details for the Protective Works to be provided or constructed have been agreed or settled in accordance with paragraph 14 (dispute resolution) and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 4(3) (removal of apparatus and rights for alternative apparatus), Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Protective Works.

(13) Where the undertaker needs to carry out emergency works—

(a) it must give to Exolum notice before such works commence, or as soon as is reasonably practicable after the works have commenced where it is not reasonably practicable to provide notice prior to commencement;

(b) the parties will work together to co-ordinate their respective works and agree a plan of those works before such works commence, or as soon as is reasonably practicable after the works have commenced where it is not reasonably practicable to provide notice prior to commencement; and

(c) it must comply with the conditions imposed under sub-paragraph (1) insofar as is reasonably practicable in the circumstances.

(14) In this Part of this Schedule, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property where such works will or may materially and adversely affect the Apparatus or Exolum's access to Apparatus.

Cathodic protection testing

7.—(1) Where in the reasonable opinion of Exolum or the undertaker:

(a) the Authorised Development might interfere with the cathodic protection forming part of Apparatus; or

(b) any Apparatus might interfere with any proposed or existing cathodic protection forming part of the Authorised Development,

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

(2) The parties shall carry out the works and enter into such agreements (if any) as are necessary to implement the measures for providing or preserving cathodic protection under this paragraph.

Expenses

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

(a) undertaking its obligations under this Schedule including—

(i) the installation, inspection, removal, alteration, testing or protection of any Apparatus, Alternative Apparatus and/or Protective Works;

(ii) the execution of any other works under this Schedule; and

(iii) the review and assessment of Plans;

(b) the watching of and inspecting the execution of the Authorised Development, any Restricted Works and any works undertaken by third parties as a result of Authorised Development (including the assessment of Plans); and

(c) imposing reasonable requirements for the protection or alteration of Apparatus affected by the Authorised Development or works as a consequence of the Authorised Development in accordance with paragraph 6(3) (retained apparatus and alternative apparatus: protection),

together with any administrative costs properly and reasonably incurred by Exolum.

(2) Provided that Exolum takes all reasonable steps to minimise the costs incurred in the following circumstances, there will be no deduction from any sum payable under this paragraph as a result of—

(a) the placing of apparatus of a better type, greater capacity or of greater dimensions, or at a greater depth than the existing Apparatus;

(b) the placing of apparatus in substitution of the existing Apparatus that may defer the time for renewal of the existing Apparatus in the ordinary course; or

(c) the scrap value (if any) of any Apparatus removed.

(3) Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Exolum, the undertaker must pay Exolum sufficiently in advance but to enable Exolum to undertake its obligations under this Schedule in a manner that is neutral to its cash flow provided that the undertaker shall not be required to make any such payment earlier than 14 days before the date on which the relevant cost or expense is reasonably anticipated to be incurred by Exolum. In the event that the costs reasonably incurred by Exolum are less than the amount paid by the undertaker pursuant to this paragraph then Exolum must promptly repay any overpayment to the undertaker within 56 days of the payment of those costs.

Damage to property and other losses

9.—(1) Subject to sub-paragraphs (2) to (6), the undertaker shall:

(a) indemnify Exolum for all reasonably incurred loss, damage, [liability,] costs and expenses suffered or reasonably incurred by Exolum arising out of:

(i) the carrying out of works under this Schedule;

(ii) the carrying out of the Authorised Development;

(iii) the use or occupation of land over or in the vicinity of any Apparatus in connection with the carrying out the Authorised Development;

(iv) any injury or damage whatsoever to any property, real or personal, including the property of Exolum; and

(v) any matters arising out of or in connection with the Order;

(b) indemnify Exolum against any claim made against, or loss suffered by, Exolum as a result of any act or omission committed by the undertaker's officers, employees, contractors or agents whilst on or in the vicinity of any Apparatus for the [purposes of carrying out any activity authorised by this Order] [construction, maintenance or use of the Authorised Development];

(c) pay to Exolum in accordance with the terms of the provisions of this Part of this Schedule, the cost reasonably and properly incurred by Exolum in making good any damage to the Apparatus (other than Apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising out of the carrying out of works under this Schedule and arising out of the carrying out of the Authorised Development subject to provision of reasonable supporting evidence of the costs reasonably incurred;

(d) pay to Exolum the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply though its Apparatus in consequence of the carrying out of works under this Schedule or the carrying out of the Authorised Development; and

(e) make reasonable compensation to Exolum for other losses [directly arising from] damages, penalty or costs incurred by Exolum by reason or in consequence of any such damage to or interruption of its Apparatus, including [reasonable third-party claims] [all claims by third parties].

(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the negligent act, neglect or default of Exolum, its officers, contractors or agents[; and

(b) 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.]

(3) 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 shall not, excuse the undertaker from liability under the provisions of sub-paragraph (1), except to the extent that such loss arises from the negligence or default of Exolum in line with sub-paragraph (2).

(4) Exolum shall at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which it suffers in connection with this Schedule and if reasonably requested to do so by the undertaker, Exolum, must provide an explanation of how the loss, damage, liability, claim, cost or expense has been mitigated, where relevant.

(5) The undertaker warrants that it will use [all] reasonable endeavours to ensure—

(a) the information it or any of its employees, agents or contractors provide to Exolum about the Plans or the Authorised Development and on which Exolum relies in the design of and carrying out of any works is accurate to the best of its knowledge; and

(b) the undertaker or any of its employees, agents or contractors have exercised all the reasonable skill, care and diligence to be expected of a qualified and experienced member of their respective profession.

(6) Exolum must—

(a) give to the undertaker reasonable notice of any claim or demand to which this paragraph applies as soon as reasonably possible after Exolum become aware of any claims or demands;

(b) [not admit liability or make any offer to settle or settle or compromise any such claim without the prior 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);] and

(c) keep the undertaker informed in relation to the progress of any such claims and demands and pay due regard to the undertaker's reasonable representations in relation to them.

Insurance

10.—(1) the undertaker must not carry out any Restricted Works unless and until Exolum has confirmed to the undertaker in writing that it is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker (or its contractor) has procured acceptable professional indemnity insurance and public liability insurance with minimum cover of £25 million (twenty five million pounds) per event, with respect to the carrying out of the works.

(2) The undertaker must maintain such insurance for the construction period of the Authorised Development from the proposed date of Commencement of the Authorised Development.

Co-operation and reasonableness

11.—(1) Where Apparatus is required to be protected, altered, diverted or removed under this Schedule, the undertaker must use all reasonable endeavours to co-ordinate the execution of any works under this Schedule—

(a) in the interests of safety;

(b) in the interest of the efficient and economic execution of both Exolum's works and the Authorised Development; and

(c) taking into account the need to ensure the safe and efficient operation of Apparatus and carrying out of Exolum's functions.

(2) Exolum must use reasonable endeavours to co-operate with the undertaker for the purposes outlined in sub-paragraph (1).

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

Emergency circumstances

12.—(1) The undertaker acknowledges that Exolum provides services to His Majesty's Government, using the Apparatus, which may affect any works to be carried under this Schedule and the Authorised Development.

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

(a) circumstances in which, in the determination of the Government, 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 the 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 the Government; or

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

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

(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 will include costs of demobilising and remobilising any workforce, and any costs to protect the Apparatus "mid-works") to account for the suspension.

(4) Exolum will not be liable for any costs, expenses, loss or liabilities the undertaker incurs as a result of the suspension of any activities under sub-paragraphs (2) to (3) or delays caused by it.

Escalation of differences

13.—(1) The undertaker and Exolum must use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Schedule in accordance with the following provisions.

(2) The undertaker and Exolum will each nominate a representative who will meet to try to resolve the matter. If the matter is not resolved at that level within ten working days of either the undertaker or Exolum requesting such a meeting (or such longer period as may be agreed between the undertaker and Exolum) the matter may at the request of either the undertaker or Exolum be referred for discussion at a meeting to be attended by a senior executive from each party.

(3) If the meeting between senior executives fails to result in a settlement within 20 working days of the date of the request for such a meeting (or if it is not possible to convene a meeting within this period) then either the undertaker or Exolum may refer the matter to expert determination or arbitration in accordance with the provisions of paragraphs 14 (dispute resolution).

Dispute resolution

14.—(1) If any dispute or difference arising out of or in connection with this Schedule is not resolved in accordance with paragraph 13 (escalation of differences), either the undertaker or Exolum may refer the matter to—

(a) in the case of any dispute or difference pursuant to sub-paragraphs 6(1), (4) or (11) (retained apparatus and alternative apparatus: protection), expert determination under paragraphs 13 (escalation of differences) and 14 (dispute resolution); or

(b) in the case of any dispute or difference not falling within sub-paragraph (1)(a), arbitration under article 45 (arbitration) of the Order.

(2) The parties will agree on the appointment of an independent Expert and must agree with the Expert the terms of their appointment.

(3) If the parties are unable to agree on an Expert or the terms of their appointment within five working days of either party serving details of a suggested expert on the other, either party will then be entitled to request the Institution of Civil Engineers or its successor to appoint an Expert and to agree with the Expert the terms of their appointment.

(4) The Expert is required to prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to them.

(5) If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by sub-paragraph (4) then either party may re-apply to the relevant professional body referred to above to discharge the Expert and to appoint a replacement Expert with the required expertise and sub-paragraph (4) onwards will apply to the new Expert as if they were the first Expert appointed.

(6) The parties are entitled to make submissions to the Expert and will provide the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.

(7) The Expert will act as an expert and not as an arbitrator. The Expert may award interest as part of their decision. The Expert's written decision on the matters referred to them will be final and binding on the parties in the absence of manifest error or fraud.

(8) The Expert may direct that any legal costs and expenses incurred by a party in respect of the determination will be paid by another party to the determination on the general principle that costs should follow the event, except where it appears to the Expert that, in the circumstances, this is not appropriate in relation to the whole or part of such costs. The Expert's fees and any costs properly incurred by them in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) will be borne by the parties equally or in such other proportions as the Expert directs.

(9) The dispute resolution procedure set out in this Schedule will apply to matters dealt with in this Schedule notwithstanding any dispute resolution procedure provided for either in the Order or as part of any other consent in respect of the Authorised Development.

Miscellaneous

15.—(1) Nothing in this Schedule affects the provisions of any enactment or prior 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 the Order is granted.

No failure or delay by a party to exercise any right or remedy provided under this Schedule or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy.