

SCHEDULE 12

PROTECTIVE PROVISIONS

PART 17

FOR THE PROTECTION OF THE SEMBCORP PIPELINE CORRIDOR

Extent of this Part

A. —(1) The provisions of this Part have effect for the benefit of owners and operators in the Sembcorp Pipeline Corridor, owners and operators in the Wilton Complex and Sembcorp unless otherwise agreed in writing between the undertaker and Sembcorp.

(2) Except to the extent as may be otherwise agreed in writing between the undertaker and Sembcorp, where the benefit of this Order is transferred or granted to another person under article 8 (*consent to transfer benefit of Order*)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between Sembcorp and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to Sembcorp on or before the date of that transfer or grant.

(3) Sub-paragraph (2) applies to any agreement:

(a) which states that it is "*entered into for the purposes of the Sembcorp Protective Provisions*"; and

(b) whether entered into before or after the making of this Order.

(4) Article 44 (*procedure in relation to certain approvals*) paragraphs (4) and (5) do not apply to any consent, agreement or approval required or contemplated by any of the provisions of this Part.

Interpretation of this Part

B. Notwithstanding article 2(1) of this Order, in this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to serve the owner of the apparatus in question in a manner no less efficient than previously;

"apparatus" means mains, pipes, cables, sewers, drains, ditches, watercourses or other apparatus and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or on land;

"operator" means any person who is responsible for the construction, operation, use, inspection, adjustment, alteration, repair, maintenance, renewal, removal or replacement of any apparatus or alternative apparatus in the Sembcorp Pipeline Corridor or has rights to the use of such apparatus or alternative apparatus, but who is not an owner in relation to the Sembcorp Pipeline Corridor or the Wilton Complex and is not a third party owner or operator;

"owner" means—

(a) in relation to the Sembcorp Pipeline Corridor, any person—

- (i) with an interest in the Sembcorp Pipeline Corridor;
- (ii) with rights in, on, under or over the Sembcorp Pipeline Corridor;
- (iii) with apparatus in, on or under the Sembcorp Pipeline Corridor;

(b) in relation to the Wilton Complex, any owner (as defined in article 2(1) of this Order) or occupier in the Wilton Complex;

but who is not a third party owner or operator.

“Sembcorp” means Sembcorp Utilities (UK) Limited, with Company Registration Number 04636301, whose registered office is at Sembcorp UK Headquarters, Wilton International, Middlesbrough, Cleveland, TS90 8WS and any successor in title or function to the Sembcorp operations in, under or over the Sembcorp Pipeline Corridor;

“the Sembcorp operations” means—

(a) the activities and functions carried on by Sembcorp in the Sembcorp Pipeline Corridor (including in relation to any access routes and laydown spaces associated with them or it);

(b) the number 2 river tunnel between Bran Sands and North Tees crossing the Order limits under the River Tees (together with associated headhouses) operated by Sembcorp; and

(c) other pipes and apparatus (including access routes and laydown spaces associated with such pipes and apparatus) operated—

- (i) by Sembcorp; or
- (ii) by any owner or operator within the Sembcorp Pipeline Corridor; or
- (iii) for the benefit or on behalf of any owner or operator in the Wilton Complex;;

"Sembcorp Pipeline Corridor" means the infrastructure corridor managed and operated by Sembcorp shown edged red on the Sembcorp Pipeline Corridor protective provisions supporting plans;

"Sembcorp Pipeline Corridor protective provisions supporting plans" means the plans which are certified as the Sembcorp Pipeline Corridor protective provisions supporting plans by the Secretary of State under article 45 (*certification of plans etc*) for the purposes of this Order;

"third party owner or operator" means an owner or operator of apparatus the subject of the third party protective provisions;

"third party protective provisions" means the protective provisions in Parts 1 to 16 or 18 to 28 of this Schedule;

"Wilton Complex" means the industrial and manufacturing plant shown edged mauve on the Sembcorp Pipeline Corridor protective provisions supporting plans;

"works details" means-

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;

- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph H(1).

Separate approvals by third party owners or operators

- C. —(1) This Part does not require the undertaker to obtain the approval of a third party owner or operator for works details where such approval has already been obtained pursuant to the third party protective provisions.
- (2) Nothing in sub-paragraph (1) removes any obligation on the undertaker to seek consent from Sembcorp pursuant to this Part.
- (3) Where the undertaker seeks consent for works details from a third party owner or operator pursuant to the third party protective provisions, to the extent that consent would otherwise (but for sub-paragraph (1)) have been required from that person under this Part, the undertaker must provide Sembcorp with—
- (a) the same information provided to the third party owner or operator at the same time; and
 - (b) a copy of any approval from the third party owner or operator given pursuant to the third party protective provisions.

Restrictions under this Part in connection with the Sembcorp Pipeline Corridor

- D. —(1) The undertaker must not in the exercise of the powers conferred by this Order acquire, appropriate, extinguish or suspend any rights in the Sembcorp Pipeline Corridor if the authorised development can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment or suspension.
- (2) The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on the Sembcorp operations, including any disruption to access and supplies of utilities and other services that are required in order to carry out those operations.
- (3) The undertaker must not in the exercise of the powers conferred by the Order unreasonably delay or prevent the construction, installation, adjustment, alteration, operation, use, repair, maintenance, renewal, inspection, removal or replacement of apparatus in the Sembcorp Pipeline Corridor.
- E. —(1) The undertaker must not exercise the identified powers—
- (a) in relation to the Sembcorp Pipeline Corridor; or
 - (b) where the exercise of the identified powers affects apparatus in the Sembcorp Pipeline Corridor that is operated for the benefit of any owner or operator in the Wilton Complex,
- without the consent in writing of Sembcorp or, where the proposed exercise of the identified powers has been referred for determination under sub-paragraph (3) or (4) of this paragraph, of the [arbitrator][expert].
- (2) Where Sembcorp is asked to give consent for the purposes of sub-paragraph (1), the consent must not be unreasonably withheld or delayed.
- (3) If the undertaker considers that consent has been unreasonably withheld, the undertaker may refer the request for consent to an [arbitrator][expert] appointed under paragraph [N][O] for determination.

(4) If Sembcorp fails to respond to a request for consent within 30 days after the day on which the request is made, consent is deemed to have been withheld and the undertaker may refer the request for consent to an [arbitrator][expert] appointed under paragraph [N][O] for determination.

(5) Except in an emergency, or as otherwise provided in this Part, the undertaker must give at least 30 days' notice of the proposed exercise of the identified powers to Sembcorp.

(6) In this paragraph, “identified powers” means the powers conferred by the following—

- (a) article 10 (*power to alter layout etc. of streets*);
- (b) article 11 (*street works*);
- (c) article 12 (*construction and maintenance of new or altered means of access*);
- (d) article 13 (*temporary stopping up of streets, public rights of way and access land*);
- (b) article 14 (*access to works*);
- (e) article 16 (*traffic regulation*);
- (f) article 17 (*discharge of water*);
- (g) article 19 (*protective works to buildings*);
- (h) article 20 (*authority to survey and investigate the land*);
- (i) article 22 (*compulsory acquisition of land*);
- (j) article 23 (*power to override easements and other rights*);
- (k) article 25 (*compulsory acquisition of rights*);
- (l) article 26 (*private rights*);
- (m) article 28 (*acquisition of subsoil and airspace only*);
- (n) article 30 (*rights under or over streets*);
- (o) article 31 (*temporary use of land for carrying out authorised development*);
- (p) article 32 (*temporary use of land for maintaining authorised development*).

Removal of apparatus

F. —(1) If, in exercise of the powers conferred by this Order, the undertaker acquires any estate, interest or right in any land in which any apparatus is placed, the apparatus must not be removed, and any right to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation and equivalent rights for the alternative apparatus have been granted to Sembcorp and, where relevant, the owner or operator of the apparatus.

(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 the land, it must give to the owner or operator in question and

Sembcorp written notice of the 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 the undertaker must afford to the owner or operator and Sembcorp the necessary facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus in other land of the undertaker and subsequently for the maintenance of the apparatus.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between Sembcorp and the undertaker or in default of agreement settled by an [arbitrator][expert] appointed under paragraph [N][O].

(4) The owner or operator in question must, after the alternative apparatus to be provided or constructed has been agreed or determined by an [arbitrator][expert] under paragraph [N][O], and after the grant to the owner or operator of any such facilities and rights as are referred to in sub-paragraph (2) and after the expiration of any applicable notice period in respect of the works under the Pipelines Safety Regulations 1996¹, 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 this Part subject to any reasonable directions given to or requirements imposed on that owner or operator by Sembcorp.

(5) Notwithstanding sub-paragraph (4), if the undertaker gives notice in writing to the owner or operator in question and Sembcorp 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 of the undertaker, that work, instead of being executed by the owner or operator, must be executed by the undertaker without unnecessary delay to an appropriate standard and in a safe manner.

(6) If works are executed by the undertaker in accordance with sub-paragraph (5), the owner or operator of the apparatus and Sembcorp must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.

(7) Nothing in sub-paragraph (5) 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 3,000 millimetres of the apparatus, without the written agreement of Sembcorp, such agreement not to be unreasonably withheld.

Alternative apparatus

G. —(1) Where, in accordance with this Part, the undertaker affords to an owner or operator and Sembcorp 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 on such terms and conditions as may be agreed between the undertaker and Sembcorp or in default of agreement determined by an [arbitrator][expert] under paragraph [N][O], such terms to be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(2) In settling the terms and conditions in respect of alternative apparatus to be constructed in or along the authorised development, the [arbitrator][expert] 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

¹ S.I. 1996/825.

apparatus that may be required to prevent interference with any proposed works of the undertaker; 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 constructed in or along the authorised development 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][expert] materially worse than the rights enjoyed by them in respect of the apparatus to be removed, the [arbitrator][expert] must make such provision for the payment of compensation by the undertaker to the owner or operator and Sembcorp as appears to the [arbitrator][expert] to be reasonable, having regard to all the circumstances of the particular case.

Consent under this Part in connection with Sembcorp operations

H. —(1) Before commencing any part of the authorised development which would or may have an effect on the operation or maintenance of the Sembcorp operations or access to them, and in all cases where such works are within 3,000 millimetres of the Sembcorp Pipeline Corridor, the undertaker must submit to Sembcorp the works details for the proposed works and such further particulars as Sembcorp may, within 30 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) The works referred to in sub-paragraph (1) must not be commenced until the works details in respect of those works submitted under this paragraph have been approved by Sembcorp or, where the matter has been referred for determination under sub-paragraph (4) of this paragraph, of the [arbitrator][expert].

(3) Any approval of Sembcorp required under sub-paragraph (2) must not be unreasonably withheld or delayed, but may be given subject to such reasonable requirements as Sembcorp may require to be made for—

(a) the continuing safety and operational viability of the Sembcorp operations; and

(b) the requirement for Sembcorp to have reasonable access to the Sembcorp operations at all times.

(4) If the undertaker considers that consent has been unreasonably withheld or delayed or has been given subject to an unreasonable requirement, the undertaker may refer the request for consent to an [arbitrator][expert] appointed under paragraph [N][O] for determination.

(5) Subject to sub-paragraph (6), the authorised development 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).

(6) Where there has been a reference to an [arbitrator][expert] in accordance with sub-paragraph (4) and the [arbitrator][expert] gives approval for the works details, the authorised development must be carried out in accordance with the approval and any associated conditions or requirements contained in the decision of the [arbitrator][expert].

Insurance

I. —(1) Before carrying out any works forming part of the authorised development on any part of the Sembcorp Pipeline Corridor, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place a policy of insurance (to

include cover in respect of any consequential loss and damage suffered by Sembcorp) with a reputable insurer for a sum not less than such level as may be agreed in writing between the undertaker and Sembcorp, and evidence of that insurance must be provided to Sembcorp on request.

(2) Not less than 90 days before carrying out any works forming part of the authorised development on any part of the Sembcorp Pipeline Corridor or before proposing to change the terms of the insurance policy, the undertaker must notify Sembcorp of details of the terms or cover of the insurance policy that it proposes to put in place including the proposed level of the cover to be provided.

(3) The undertaker (or any contractor carrying out such works on behalf of the undertaker) must maintain insurance in relation to works or the use of the authorised development affecting the Sembcorp Pipeline Corridor during the operation of the authorised development at such level as may be agreed in writing between the undertaker and Sembcorp.

(4) Any dispute between the undertaker and Sembcorp regarding the terms, cover or insured level of the insurance policy shall be resolved in accordance with paragraph [N][O].

Expenses

J. —(1) Subject to the provisions of this paragraph, the undertaker must pay to the owner or operator in question and Sembcorp (as the case may be) the reasonable expenses incurred by them under this Part in connection with:

(a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus under any provision of this Part;

(b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;

(c) the survey of any land, apparatus or works, the watching, inspection, superintendence and monitoring of works or the installation or removal of any temporary works in consequence of the exercise by the undertaker of any power under this Order;

(d) the design, project management, supervision and implementation of works;

(e) the negotiation and grant of necessary rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus;

(f) monitoring the effectiveness of any requirements referred to in paragraph H(3) or (6) and the installation of any additional protective measures reasonably required in order to deal with any deficiency in the expected level of protection afforded by those requirements;

(g) any other work or thing reasonably required in consequence of the exercise by the undertaker of any power under this Order or by the service by the undertaker of any notice, plan, section or description,

within a reasonable time of being notified by the person in question that it has incurred such expenses, such notification to be provided by the owner or operator or Sembcorp (as the case may be).

(2) Where reasonable and practicable, the person to whom the payment is to be made under this paragraph must notify the undertaker of any anticipated expense as outlined in sub-paragraph (1) and provide an estimate of such costs prior to incurring such expense.

(3) In advance of any payment under sub-paragraph (1) above being made and where reasonably requested by the undertaker, the person to whom the payment is to be made under this paragraph must provide to the undertaker such reasonable evidence of the costs incurred as the undertaker may reasonably request.

(4) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under this Part, that value being calculated after removal.

(5) If in accordance with this Part—

(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 an [arbitrator][expert] under paragraph [N][O] to be necessary, then, if such placing involves cost in the construction of works under this Part 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 the owner or operator in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(6) In determining whether the placing of apparatus of a type or capacity or of particular dimensions or the placing of apparatus at a particular depth, as the case may be, are necessary under sub-paragraph (5), regard must be had to current health and safety requirements, current design standards, relevant good practice and process design specification.

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

(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 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.

(8) An amount which apart from this sub-paragraph would be payable to a person in respect of works by virtue of sub-paragraph (1) must, if it confers a financial benefit on that person by deferment of the time for renewal of the apparatus in the ordinary course of that person's business practice, be reduced by the amount that represents that benefit.

Indemnity

K. —(1) Subject to the following provisions of this paragraph, if by reason or in consequence of the construction of the authorised development, including without limitation any of the works referred to in paragraph F(2) , or any subsidence resulting

from any of these works, any damage is caused to the Sembcorp operations or property of an owner or operator or Sembcorp (other than apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of the said works under paragraph F(2)), or there is any interruption in any service provided, or in the supply of any goods, to or by an owner or operator or Sembcorp, or Sembcorp becomes liable to pay any amount to any third party as a result, the undertaker must—

(a) bear and pay the cost reasonably incurred by the owner or operator in question or Sembcorp (as the case may be) in making good such damage or restoring the service, supply or operations; and

(b) make reasonable compensation to the owner or operator in question or Sembcorp or to any other person whose supply or operations are affected by the damage or interruption (as the case may be) for any other expenses, loss, damages, penalty or costs incurred by that person, 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 any damage or interruption to the extent that it is attributable to the act, neglect or default of the person, (or its officers, employees, servants, contractors or agents) who would but for this sub-paragraph be the beneficiary of the indemnification provisions in the said sub-paragraph (1).

(3) The person to whom the liability is owed under sub-paragraph (1) 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) The person to whom the liability is owed under sub-paragraph (1) 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 applies where it is within its reasonable ability and control so to do. If requested to do so by the undertaker, the person 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). The undertaker shall only be liable under this paragraph for claims reasonably incurred by the owner or operator in question or by Sembcorp (as the case may be).

Participation in community groups

L. —(1) Before undertaking any works or exercising any powers in this Order relating to or affecting the Sembcorp operations or the Sembcorp Pipeline Corridor, the undertaker must participate in any relevant consultation groups established or co-ordinated by Sembcorp.

(2) Before undertaking any construction works affecting the Sembcorp operations or the Sembcorp Pipeline Corridor, where any of these might reasonably be expected to give rise to significantly perceptible effects beyond the Order limits in terms of—

(a) construction noise and vibration management;

(b) air quality, including dust emissions;

(c) waste management;

(d) traffic management and materials storage on site;

(e) surface water and groundwater management; or

(f) artificial light emissions,

the undertaker must participate in any relevant community environmental liaison group that may be established or co-ordinated by Sembcorp with local residents.

(3) The undertaker must co-operate with Sembcorp to respond promptly to any complaints raised in relation to the construction or operation of the authorised development or the traffic associated with the authorised development.

(4) The undertaker's obligations in this paragraph are subject to Sembcorp providing reasonable notice to them of the existence of a relevant consultation group or a relevant community environmental liaison group and reasonable notice of the arrangements for meetings of those groups

Notice of start and completion of commissioning

M. —(1) Notice of the intended start of commissioning of the authorised development must be given to Sembcorp no later than fourteen days prior to the date that commissioning is started.

(2) Notice of the intended date of final commissioning of each of Work Nos. 1 and 6 must be given to Sembcorp no later than fourteen days prior to the date of final commissioning.

Dispute resolution (option one)

N. Any difference or dispute arising between the undertaker and an owner or operator or Sembcorp (as the case may be) under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and that person, be referred to and settled by arbitration in accordance with article 47 (*arbitration*).

Dispute resolution (option two)

O. —(1) Except as provided in sub-paragraph (8), article 47 (*arbitration*) does not apply to this Part.

(2) Any difference under this Part must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified on the application of either party, with notice to the other, by the President of the Law Society.

(3) All parties involved in settling any difference, including the expert, must use best endeavours to do so within 90 days from the date of the expert first being appointed.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must within 90 days of his appointment —

(a) invite the parties to the difference and, in all cases, Sembcorp to make submissions to the expert in writing within a specified period;

(b) permit a party and, in all cases, Sembcorp to comment in writing on the submissions made by the other parties; and

(c) determine the difference, giving reasons for his decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the nature of any operation or development undertaken or proposed to be undertaken by any person other than the undertaker;
- (e) the ability of any person other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner;
- (f) the effects of the undertaker's proposals on any person other than the undertaker and the effects of any operation or development undertaken by any person other than the undertaker;
- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any person other than the undertaker;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any person; and
- (i) any other important and relevant consideration.

(7) Subject to sub-paragraph (8), any determination by the expert:

- (a) is final and binding;
- (b) must be complied with by the parties to the difference which gave rise to that determination; and
- (c) is enforceable against those parties by injunction.

(8) In the case of manifest error in the expert's decision, the difference that has been subject to expert determination may be referred to and settled by arbitration under article 47 (*arbitration*).