

# M25 junction 28 improvement scheme

**TR010029**

## **9.28 Schedule of Changes to draft Development Consent Order**

Rule 8(1)(k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

Volume 9

June 2021

# Infrastructure Planning

## Planning Act 2008

### The Infrastructure Planning (Examination Procedure) Rules 2010

## M25 junction 28 scheme

### Development Consent Order 202[x]

---

#### 9.28 SCHEDULE OF CHANGES TO DRAFT DEVELOPMENT CONSENT ORDER

---

<b>Rule Number:</b>	Rule 8(1)(k)
<b>Planning Inspectorate Scheme Reference</b>	TR010029
<b>Application Document Reference</b>	TR010029/EXAM/9.28
<b>Author:</b>	M25 junction 28 scheme, Project Team, Highways England

<b>Version</b>	<b>Date</b>	<b>Status of Version</b>
6	9 June 2021	Deadline 8
5	20 May 2021	Deadline 7
4	27 April 2021	Deadline 6
3	13 April 2021	Deadline 5
2	17 March 2021	Deadline 4
1	18 February 2021	Deadline 3a
0	4 February 2021	Deadline 2

The document summaries the proposed amendments to the dDCO which were submitted at Deadline 8 (9 June 2021). These amendments are to the version of the dDCO submitted at Deadline 7 (Document reference REP7-003). For ease of reference, text shown emboldened in red identifies insertion of new text, while text shown with a strike through are proposed for deletion.

No	Provision	Suggested amendment	Explanation for change
1.	Contents	<p>SCHEDULE 9 — PROTECTIVE PROVISIONS</p> <p>PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS</p> <p>PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS</p> <p>PART 3 — FOR THE PROTECTION OF THE ENVIRONMENT AGENCY</p> <p>PART 4 — FOR THE PROTECTION OF DRAINAGE AUTHORITIES</p> <p>PART 5 — FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER</p> <p><b>PART 6 – FOR THE PROTECTION OF CADENT GAS LIMITED</b></p>	<p>Insertion as a result of proposed protective provisions with Cadent Gas being inserted in Schedule 9 following consideration of the ExA’s Consultation draft DCO [PD-021], point 25</p>
2.	Article 18(2)	<p><b>18.</b>—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.</p> <p>(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—</p> <p>(a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;</p> <p>(b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;</p> <p><del>(c)</del> <b>(c)</b> authorise the use as a parking place of any road;</p> <p><del>(d)</del> <b>(c)</b> make provision as to the direction or priority of vehicular traffic on any road; and</p> <p><del>(e)</del> <b>(d)</b> permit or prohibit vehicular access to any road,</p>	<p>Deletion following consideration of the ExA’s Consultation draft DCO [PD-021], point 3.</p>

No	Provision	Suggested amendment	Explanation for change
		either at all times or at times, on days or during such periods as may be specified by the undertaker.	
3.	Schedule 1	<b>Work No. 32</b> — Accommodation works to provide replacement facilities for Maylands Golf Course, over an area of land approximately <del>14,598</del> <b>54,578</b> square metres in area and situated at a location to the west of Work No. 29 as shown on sheets 1 and 3 of the works plans.	Amendment as a result of accepted change 7.
4.	Schedule 2, Requirement 3(2)	<p><b>3.</b>—(1) The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority and relevant highway authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to the engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.</p> <p>(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and the undertaker must make those amended details available <del>in electronic form</del> <b>online</b> for inspection by members of the public.</p>	Amendment following consideration of the ExA's Consultation draft DCO [PD-021], point 9.
5.	Schedule 2, Requirement 4(2)	<p>(2) The CEMP must be written in accordance with ISO14001 and, so far as is relevant to that part of the authorised development, must reflect the <b>relevant</b> mitigation measures set out in the REAC, and must include the following management plans—</p> <ul style="list-style-type: none"> <li>(a) <del>P</del><b>p</b>ollution <del>P</del><b>p</b>revention <del>P</del><b>p</b>lan;</li> <li>(b) <del>D</del><b>d</b>ust <del>N</del><b>n</b>oise and <del>N</del><b>n</b>uisance <del>M</del><b>m</b>anagement <del>P</del><b>p</b>lan;</li> <li>(c) <del>E</del><b>e</b>cological <del>H</del><b>h</b>abitats and <del>S</del><b>s</b>pecies <del>P</del><b>p</b>lan;</li> <li>(d) <del>I</del><b>i</b>nvasive <del>S</del><b>s</b>pecies <del>M</del><b>m</b>anagement <del>P</del><b>p</b>lan;</li> <li>(e) <del>S</del><b>s</b>urface <del>W</del><b>w</b>ater <del>M</del><b>m</b>anagement <del>P</del><b>p</b>lan;</li> <li>(f) <del>C</del><b>c</b>ontaminated <del>L</del><b>l</b>and <del>M</del><b>m</b>anagement <del>P</del><b>p</b>lan;</li> <li>(g) <del>S</del><b>s</b>oil <del>H</del><b>h</b>andling <del>M</del><b>m</b>anagement <del>P</del><b>p</b>lan;</li> </ul>	Amendments to correct errors in capitalisation and the addition of the word 'relevant' for consistency with Requirements 9 and 10 which refer to the relevant mitigation measures set out in the REAC.

No	Provision	Suggested amendment	Explanation for change
		<p>(h) <del>M</del>aterial <del>M</del>anagement <del>P</del>lan;</p> <p>(i) <del>S</del>ite <del>W</del>aste <del>M</del>anagement <del>P</del>lan;</p> <p>(j) <del>M</del>aterial, <del>W</del>aste <del>S</del>torage and <del>R</del>efuelling <del>P</del>lan;</p> <p>(k) <del>E</del>nergy and <del>R</del>esource <del>U</del>se <del>M</del>anagement <del>P</del>lan;</p> <p>(l) <del>E</del>mergency <del>R</del>esponse <del>P</del>lan; and</p> <p>(m) <del>C</del>ommunity <del>E</del>ngagement <del>P</del>lan.</p>	
6.	Schedule 2, Requirement 5(2)	<p>(2) The landscaping scheme and LEMP must reflect the <b>relevant</b> mitigation measures set out in the REAC and be substantially in accordance with the Preliminary Environmental Design and the Outline LEMP.</p>	Addition of the word 'relevant' for consistency with Requirements 9 and 10 which refer to the relevant mitigation measures set out in the REAC.
7.	Schedule 2, Requirement 8(1)	<p><b>8.</b>-(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the <b>relevant</b> mitigation measures set out in the REAC including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation by the undertaker with the relevant planning authority and relevant highway authority on matters related to its function.</p>	Addition of the word 'relevant' for consistency with Requirements 9 and 10 which refer to the relevant mitigation measures set out in the REAC.
8.	Schedule 2, Requirement 9	<p><b>9.</b>—(1) No part of the authorised development is to commence until an <del>A</del>rchaeological <del>M</del>anagement <del>P</del>lan has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority to the extent that it relates to matters relevant to its functions.</p> <p>(2) The <del>A</del>rchaeological <del>M</del>anagement <del>P</del>lan must be substantially in accordance with the Outline Archaeological Management Plan and reflect the relevant mitigation measures set out in the REAC.</p> <p>(3) The authorised development must be carried out in accordance with the approved <del>A</del>rchaeological <del>M</del>anagement <del>P</del>lan referred to in sub-paragraph (1).</p>	Amendment to correct errors in capitalisation.

No	Provision	Suggested amendment	Explanation for change						
9.	Schedule 2, Requirement 11	<p><b>11.</b>—(1) No part of the authorised development is to commence until an <del>A</del>rboricultural <del>M</del>ethod <del>S</del>tatement has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority to the extent that it relates to matters relevant to its functions.</p> <p>(2)The <del>A</del>rboricultural <del>M</del>ethod <del>S</del>tatement must be substantially in accordance with the Outline Arboricultural Method Statement and reflect the relevant mitigation measures set out in the REAC.</p> <p>(3) The authorised development must be carried out in accordance with the approved <del>A</del>rboricultural <del>M</del>ethod <del>S</del>tatement referred to in sub-paragraph (1).</p>	Amendment to correct errors in capitalisation.						
10.	Schedule 2, new Requirement 15	<p><b>Maylands Golf Course accommodation works</b></p> <p><b>15. Accommodation works to provide replacement facilities for Maylands Golf Course forming Work No. 32 must be undertaken and available for use prior to the opening to traffic of the new loop road forming Work No. 6.</b></p>	Amendment following consideration of the ExA's Consultation draft DCO [PD-021], point 22.						
11.	Schedule 8, Land Plans sheet 3 of 4	<table border="1"> <tr> <td data-bbox="528 895 622 1018">3/21</td> <td data-bbox="622 895 1379 1018"><b>Construction works relating to the provision of accommodation works for Maylands Golf Course and to establish an ecological mitigation area.</b></td> <td data-bbox="1379 895 1671 1018">Work Nos. 25 and 32</td> </tr> <tr> <td data-bbox="528 1018 622 1106">3/23</td> <td data-bbox="622 1018 1379 1106"><b>Construction works relating to the provision of accommodation works for Maylands Golf Course.</b></td> <td data-bbox="1379 1018 1671 1106">Work No. 32</td> </tr> </table>	3/21	<b>Construction works relating to the provision of accommodation works for Maylands Golf Course and to establish an ecological mitigation area.</b>	Work Nos. 25 and 32	3/23	<b>Construction works relating to the provision of accommodation works for Maylands Golf Course.</b>	Work No. 32	Amendment as a result of accepted change 7.
3/21	<b>Construction works relating to the provision of accommodation works for Maylands Golf Course and to establish an ecological mitigation area.</b>	Work Nos. 25 and 32							
3/23	<b>Construction works relating to the provision of accommodation works for Maylands Golf Course.</b>	Work No. 32							
12.	Schedule 9, Part 4. Paragraph 31(2)	<p><b>31.</b>—(1) Before beginning to construct any specified work in relation to a key watercourse, the undertaker must submit to the drainage authority plans of the work, and such further particulars available to the undertaker as the drainage authority may within 14 days of the first submission of the plans reasonably require.</p> <p><b>(2) On receipt of the plans submitted under sub-paragraph (1) the drainage authority may within 14 days of the first submission of the plans-</b></p> <p><b>(a) request such further particulars as the drainage authority may reasonably require; or</b></p>	Amendment following further discussions with Essex County Council.						

No	Provision	Suggested amendment	Explanation for change
		(b) <b>request up to a further 14 days in which to review the plans to identify if any further particulars are required.</b>	
13.	Schedule 9, Part 4. Paragraph 33(4)	(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than <del>28</del> <b>14</b> days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure reasonably incurred by it in so doing is to be recoverable from the undertaker.	Amendment following further discussions with Essex County Council.
14.	Schedule 9, Part 4. Paragraph 34(4)	(4) If, within a reasonable period being not less than <del>28</del> <b>14</b> days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (3) on the person liable for maintenance, that person has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the person liable for maintenance.	Amendment following further discussions with Essex County Council.
15.	Schedule 9, new Part 6	<p style="text-align: center;"><b>PART 1</b></p> <p style="text-align: center;"><b>FOR THE PROTECTION OF CADENT GAS LIMITED</b></p> <p style="text-align: center;"><i>Application</i></p> <p><b>54. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.</b></p> <p style="text-align: center;"><i>Interpretation</i></p> <p><b>55. In this Part of this Schedule—</b></p>	Proposed protective provisions with Cadent Gas inserted following consideration of the ExA's Consultation draft DCO [PD-021], point 25.

No	Provision	Suggested amendment	Explanation for change
		<p>“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;</p> <p>“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of Cadent’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent’s undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;</p> <p>“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986(1);</p> <p>“Cadent’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995(2));</p> <p>“commence” and “commencement” include any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;</p> <p>“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;</p> <p>“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;</p> <p>“functions” includes powers and duties;</p> <p>“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;</p>	

(1) 1986 c. 44.  
(2) 1995 c. 45.



No	Provision	Suggested amendment	Explanation for change
		<p>“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for Cadent’s approval a ground mitigation scheme;</p> <p>“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;</p> <p>“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;</p> <p>“maintain” and “maintenance” have effect as if Cadent’s existing apparatus was authorised development and as if the term maintain includes protect and use;</p> <p>“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;</p> <p>“rights” includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and</p> <p>“specified works” means any of the authorised development or activities (including maintenance) undertaken in association with the authorised development which—</p> <p>(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 60(2) or otherwise; or</p> <p>(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 60(2) or otherwise.</p> <p style="text-align: center;"><i>On street apparatus</i></p> <p>56.—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—</p> <p>(a) paragraphs 57, 62, 63 and 64; and</p>	

No	Provision	Suggested amendment	Explanation for change
		<p>(b) where sub-paragraph (2) applies, paragraphs 60 and 61.</p> <p>(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing adopted public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.</p> <p>(3) [Paragraph 63 does not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—</p> <p>(a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and</p> <p>(b) the allowable costs are to be borne by the undertaker and Cadent in such proportions as may be prescribed by any such regulations.]</p> <p><i>Note: Highways England considers that sub-paragraph (3) should be included in the Order, Cadent does not.</i></p> <p style="text-align: center;"><i>Apparatus of Cadent in stopped up streets</i></p> <p>57.—(1) Where any street is stopped up under article 15 (permanent stopping up of streets), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway, but nothing in this paragraph affects any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 60.</p> <p>(2) Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 13 (temporary closure, alteration, diversion and restriction of use of streets), Cadent will be 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 it would have been entitled to do immediately before such temporary alteration, diversion or restriction</p>	

No	Provision	Suggested amendment	Explanation for change
		<p><b>of use in respect of any apparatus which at the time of the stopping up or diversion was in that street.</b></p> <p style="text-align: center;"><i>Protective works to buildings</i></p> <p><b>58.—(1) The undertaker must exercise the powers conferred by article 21 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed).</b></p> <p style="text-align: center;"><i>Acquisition of land</i></p> <p><b>59.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.</b></p> <p><b>(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development or maintenance thereof.</b></p> <p><b>(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other</b></p>	

No	Provision	Suggested amendment	Explanation for change
		<p><b>enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.</b></p> <p><b>(4) Any agreement or consent granted by Cadent under paragraph 62 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).</b></p> <p><b>(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.</b></p> <p><b>(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 60 do not apply, the undertaker must, unless Cadent agrees otherwise—</b></p> <p style="padding-left: 40px;"><b>(a) retain any notice of Cadent’s easement, right or other interest on the title to the relevant land when registering the undertaker’s title to such acquired land; and</b></p> <p style="padding-left: 40px;"><b>(b) (where no such notice of Cadent’s easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker’s interest in such acquired land at the Land Registry) a notice of Cadent’s easement, right or other interest in relation to such acquired land.</b></p> <p style="text-align: center;"><i>Removal of apparatus</i></p> <p><b>60.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 59, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.</b></p> <p><b>(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus</b></p>	

No	Provision	Suggested amendment	Explanation for change
		<p><b>placed in that land, it must give to Cadent advance 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 Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 61(1)) the necessary facilities and rights—</b></p> <p><b>(a) for the construction of alternative apparatus; and</b></p> <p><b>(b) subsequently for the maintenance of that apparatus.</b></p> <p><b>(3) If 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, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation will not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.</b></p> <p><b>(4) Any alternative apparatus to be constructed in land of or land secured by 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 Cadent and the undertaker.</b></p> <p><b>(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.</b></p> <p style="text-align: center;"><i>Facilities and rights for alternative apparatus</i></p> <p><b>61.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.</b></p>	

No	Provision	Suggested amendment	Explanation for change
		<p><b>(2)If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 68 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.</b></p> <p style="text-align: center;"><i>Retained apparatus: protection of Cadent</i></p> <p><b>62.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.</b></p> <p><b>(2)The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—</b></p> <ul style="list-style-type: none"> <li><b>(a) the exact position of the works;</b></li> <li><b>(b) the level at which these are proposed to be constructed or renewed;</b></li> <li><b>(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;</b></li> <li><b>(d) the position of all apparatus;</b></li> <li><b>(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and</b></li> <li><b>(f) any intended maintenance regimes.</b></li> </ul> <p><b>(3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).</b></p> <p><b>(4) Any approval of Cadent given under sub-paragraph (3)—</b></p> <ul style="list-style-type: none"> <li><b>(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and</b></li> </ul>	

No	Provision	Suggested amendment	Explanation for change
		<p><b>(b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).</b></p> <p><b>(5) Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.</b></p> <p><b>(6)Specified works must only be executed in accordance with—</b></p> <p><b>(a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and</b></p> <p><b>(b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.</b></p> <p><b>(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent’s satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.</b></p> <p><b>(8) If Cadent, 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 54 to 56 and 59 to 61 apply as if the removal of the apparatus had been required by the undertaker under paragraph 60(2).</b></p> <p><b>(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan (and ground monitoring scheme if required), instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan (and ground monitoring scheme if required).</b></p> <p><b>(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—</b></p> <p><b>(a) the undertaker must implement an appropriate ground mitigation scheme; and</b></p>	

No	Provision	Suggested amendment	Explanation for change
		<p>(b) Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 63.</p> <p>(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.</p> <p>(12) In this paragraph, “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.</p> <p style="text-align: center;"><i>Expenses</i></p> <p>63.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—</p> <p>(a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent—</p> <p style="padding-left: 40px;">(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 60(3) if it elects to do so; or</p> <p style="padding-left: 40px;">(ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;</p> <p>(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;</p> <p style="padding-left: 40px;">(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;</p>	



No	Provision	Suggested amendment	Explanation for change
		<p>(d) the approval of plans;</p> <p>(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;</p> <p>(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;</p> <p>(g) any watching brief pursuant to sub-paragraph 62(6).</p> <p>(2) [There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.</p> <p>(3) If in accordance with the provisions of this Part of this Schedule—</p> <p>(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</p> <p>(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,</p> <p>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 68 (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 Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.</p> <p>(4) For the purposes of sub-paragraph (3)—</p>	

No	Provision	Suggested amendment	Explanation for change
		<p>(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and</p> <p>(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 will be treated as if it also had been agreed or had been so determined.</p> <p>(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, 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 Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.]</p> <p><i>Note: Highways England considers that sub-paragraphs (2) to (5) should be included in the Order, Cadent does not.</i></p> <p style="text-align: center;"><i>Indemnity</i></p> <p><b>64.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development (including works carried out under article 21 (protective work to buildings)) by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—</b></p> <p>(a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and</p>	

No	Provision	Suggested amendment	Explanation for change
		<p>(b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred by, paid by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.</p> <p>(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.</p> <p>(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—</p> <p>(a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents;</p> <p>(b) any part of the authorised development carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 9 (consent to transfer benefit of the Order);</p> <p>(c) any 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 at the commencement of the relevant works referred to in sub-paragraph (1) [save that the undertaker’s indemnity under sub-paragraph (1)(b) extends to any contractual liability Cadent has in respect of the indirect or consequential loss of a landowner in whose land apparatus is, or pursuant to the works will be, located].</p> <p><i>Note: Cadent considers the proviso in 64(3)(c) in square brackets should be included in the Order, Highways England does not.</i></p> <p>(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.</p>	

*Enactments and agreements*

**65. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.**

*Co-operation*

**66.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under paragraph 60(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 62, 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 Cadent’s undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.**

**(2) For the avoidance of doubt whenever Cadent’s consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.**

*Access*

**67. If in consequence of any agreement reached in accordance with paragraph 59(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.**

*Arbitration*

**68. Save for differences or disputes arising under sub-paragraphs 60(2) and 60(4) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 54 (arbitration).**

*Notices*

No	Provision	Suggested amendment			Explanation for change
		<p><b>69. Notwithstanding article 47 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 62(1) must be sent via email to Cadent Gas Limited Plant Protection at <a href="mailto:plantprotection@cadentgas.com">plantprotection@cadentgas.com</a> as well as via post to Plant Protection, Cadent Gas Limited, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA, or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.</b></p>			
16.	Schedule 10	<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>	Amends to revisions to reflect updated versions of documents.
Engineering drawings and sections – Regulation 5(2)(o), 5(4) and 6(2)	TR010029/APP/2.8	Ø <b>1</b>			
Land plans – Regulation 5(2)(i)	TR010029/APP/2.2	± <b>2</b>			
Outline Archaeological Management Plan – Regulation 5(2)(q)	TR010029/EXAM/9.45	Ø <b>1</b>			
Outline Construction Environmental Management Plan – Regulation 5(2)(q)	TR010029/APP/7.2	± <b>3</b>			
Outline Traffic Management Plan	TR010029/EXAM/9.52	Ø <b>1</b>			
Register of Environmental Actions and Commitments – Regulation 5(2)(q)	TR010029/APP/7.3	± <b>3</b>			
Scheme layout plans – Regulation 5(2)(o)	TR010029/APP/2.7	Ø <b>1</b>			
Special category land plans – Regulation 5(2)(i)(iv)	TR010029/APP/2.11	Ø <b>1</b>			
Speed limits and traffic regulation plans – Regulation 5(2)(o)	TR010029/APP/2.6	Ø <b>2</b>			
Streets, rights of way and access plans – Regulation 5(2)(k)	TR010029/APP/2.4	Ø <b>1</b>			
Works plans – Regulation 5(2)(j)	TR010029/APP/2.3	Ø <b>2</b>			

© Crown copyright (2021).

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence:

visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/)  
write to the Information Policy Team, **The National Archives, Kew, London TW9 4DU**,  
or email [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Printed on paper from well-managed forests and other controlled sources.

Registered office Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ  
Highways England Company Limited registered in England and Wales number 09346363