

**THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010**  
**HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE DEVELOPMENT CONSENT ORDER**

**PINS REFERENCE TR050007**

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**DEADLINE 3 REPRESENTATION FROM  
CADENT GAS LIMITED**

**COMMENTS ON THE APPLICANT'S REVISED  
DDCO**

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## 1 INTRODUCTION

- 1.1 Cadent Gas Limited (Cadent) is a statutory undertaker for the purposes of the Planning Act 2008 (PA 2008) and is providing comments on the Applicant's revised draft DCO (dDCO) submitted by the Applicant (AS-008).
- 1.2 Cadent's correct registered office is Cadent, Pilot Way, Ansty, Coventry, England, CV7 9JU.

## 2 PROTECTIVE PROVISIONS UPDATE

- 2.1 Cadent has not reached agreement with the Applicant on the form of the protective provisions including the specific matters Cadent has raised in its Written Representation. Negotiations are, however, continuing and Cadent remain hopeful that agreement can be reached.
- 2.2 To assist the Examining Authority and the Applicant, Cadent appends a version of the Protective Provisions to be included at Schedule 13, Part 4 with drafting notes as to the changes that it would wish to see in case agreement cannot be reached.
- 2.2 The outstanding issues under the protective provisions relate to the following:

Issue	Cadent's Position
Inclusion of definitions related to acceptable insurance and security and text at paragraph 9(5)	<p>Provision needs to be included within the DCO or a side agreement that the works in the vicinity of Cadent's apparatus are not commenced unless: (1) there is third party liability insurance effected and maintained for the construction period of the relevant works; and (2) the person or body undertaking the works (acknowledging the ability to transfer the benefit of the DCO) has the appropriate net worth to enable it to meet any liability arising from damage to Cadent's apparatus (acknowledging the potential significant consequences of damaging a gas pipeline) or that there is appropriate security in place through a bond or guarantee.</p> <p>Cadent derives no benefit from the Project and needs to ensure that it is not be exposed to any costs or losses as a result of the Project. Money spent and costs incurred by Cadent is ultimately passed on to consumers in their energy bills. This is not appropriate in respect of losses caused by a third party and Cadent requires, therefore, the comfort that works near its apparatus are the subject of appropriate insurance and security.</p>
Definition of "ground mitigation scheme"	This is a scheme approved by Cadent not the undertaker.
Definition of "maintain" needs to include decommissioning	"Remove" is included within the definition of "maintain", however a situation where decommissioned apparatus is left in situ is not covered (which is emerging as environmental best practice for decommissioning gas pipelines)
A definition of "rights" needs to be added	Where reference is made to rights in the protective provisions this needs to extend to include restrictive covenants. As a gas undertaker Cadent requires restrictions to ensure that future

	works or planting do not take place which could affect its apparatus.
Definition of "Specified Works"	Limb (b) needs to reflect Cadent guidance CD/SP/SSW/22 "Cadent's policies for safe working in the vicinity of Cadent's apparatus" rather than National Grid's guidance referenced.
On Street Apparatus (paragraph 3)	<p>Sub-paragraph (1) needs to refer to rights and apparatus of Cadent rather than the undertaker.</p> <p>A new sub-paragraph (3) needs to be added. The Applicant is not a major transport provider and so does not ordinarily benefit from the cost sharing provisions. Article 29(5) could suggest otherwise and the Applicant should not have the benefit of the cost sharing provisions in the New Roads and Street Works Act 1991.</p>
Apparatus of Cadent in Stopped up Streets (paragraph 4(2))	Where a street is stopped-up temporarily Cadent must be able to do all such works and things in, upon or under any such street as it could do before the temporary stopping-up. Simply safeguarding the right to maintain is insufficient. Cadent has a statutory obligation to maintain a safe and efficient gas network and needs to undertake any activities required to fulfil that function.
New paragraph [5] required	<p>Due to Cadent's statutory functions and the importance of its apparatus, 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 Applicant should not be allowed to acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Cadent otherwise than by agreement.</p> <p>Cadent will naturally work with the Applicant and where alternative apparatus is provided together with the necessary rights the protective provisions ensure that existing apparatus can be removed/decommissioned and/or diverted (as appropriate) and the rights of Cadent in respect of existing apparatus extinguished.</p>
Existing paragraph 5 and Removal of Apparatus	<p>This paragraph needs to acknowledge that apparatus may be decommissioned where apparatus is left in situ (which as noted above is emerging as environmental best practice for decommissioning gas pipelines).</p> <p>Due to Cadent's statutory functions to maintain its network and the fact that Cadent has no statutory right to retain and maintain apparatus Cadent can only decommission or remove existing apparatus where it has replacement apparatus <u>and it has the necessary rights granted to retain maintain etc that apparatus</u> and so current paragraph 5(1) and 5(4) need to be extended to include this precondition.</p> <p>Paragraph 5(2) also does not acknowledge that as well as removing apparatus Cadent may be diverting and so there needs to be reference to Cadent moving its apparatus.</p>

	<p>Where the Applicant is unable to afford the facilities and rights to Cadent because alternative apparatus needs to be provided outside the order limits or on land which the Applicant does not control, Cadent is seeking the following wording at paragraph 5(3):</p> <p>“If the undertaker is unable to afford such facilities and rights as mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent may (acting reasonably in the circumstances), on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in any endeavour to assist the undertaker in obtaining the necessary rights and facilities in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to do so.”</p> <p>The Applicant is seeking to place an absolute obligation on Cadent to obtain the facilities and rights.</p> <p>The reason that Cadent is seeking this wording is that Cadent (and its personnel) has in the past been placed under significant pressure to obtain rights and facilities in land where an absolute obligation has been placed on it. Cadent will of course assist the Applicant. However it is key that Cadent and the Applicant work in partnership to obtain rights and facilities and that it is not left to Cadent in isolation to secure. This goes back to the point that we make above that Cadent derives no benefit from the Project. As such, an absolute obligation on it to assist in securing rights and facilities is not appropriate.</p>
Existing paragraph 7 protection for retained apparatus	<p>There are various references to the undertaker that need to be replaced with Cadent.</p> <p>The reference to "reasonable requirements" in sub-paragraph (6) is not appropriate as the requirements are the requirements referenced in the other sub-paragraphs and it is not appropriate to have another test of reasonableness.</p> <p>Sub-paragraph (10) needs to reflect Cadent guidance CD/SP/SSW/22 "Cadent's policies for safe working in the vicinity of Cadent's apparatus" rather than National Grid's guidance.</p>
Existing paragraph 8 Expenses	<p>Cadent derives no benefit from the Project and needs to ensure that it is not be exposed to any costs or losses as a result of the Project and therefore all expenses that it could be put to needs to be covered.</p> <p>The expenses that are recoverable need to include Cadent's cost in connection with negotiating rights with third parties as well as actually acquiring and any costs and expenses associated with Cadent watching and inspecting the execution of works pursuant to sub-paragraph 7(6).</p>

	<p>Paragraph 8(3) needs to acknowledge that whilst it may be possible to replace apparatus like for like that may not be appropriate in the circumstances.</p>
<p>Existing paragraph 9 Indemnity</p>	<p>The indemnity provisions need to be amended to reflect the following:</p> <p>It needs to be clear that the indemnity extends to works to Cadent's apparatus and the fact that Cadent may have a watching brief should not affect the indemnity</p> <p>Separately we understand that the Applicant's preferred protective provisions would seek to exclude the Applicant from liability for indirect and consequential losses that third parties may suffer. The consequence of this wording would be that Cadent would be responsible for any indirect and consequential losses that a third party would suffer as a result of damage or a loss of supply caused by the Promoter. This is not acceptable and Cadent does not accept this position.</p> <p>For clarity, the indemnity only applies in respect of third party claims as follows: "any other expenses, loss, demands, proceedings, damages, claims, penalty or costs properly incurred 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". The indemnity also provides that Cadent must give the Promoter reasonable notice of any such third party claim or demand and that "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". Therefore, before the Promoter could be liable to Cadent for a third parties' costs under the indemnity, three things would need to occur:</p> <ol style="list-style-type: none"> <li>1. First, the Promoter must have caused damage or in any interruption in any service provided, or in the supply of any goods, that have caused loss to the third party;</li> <li>2. Second, that third parties' costs must have been properly incurred by or recovered from Cadent; and</li> <li>3. Third, Cadent must have either settled that claim having consulted and considered the Promoter's representations or have been obliged to make the payment in under a statutory compensation scheme. This procedure ensures that the indemnity only applies to properly incurred or recovered costs, and provides the Promoter with the opportunity to make representations on any such claim. This is sufficient protection for the Promoter.</li> </ol> <p>Notwithstanding the above and the framework of the indemnity, there is a more important principle at stake: Cadent derives no benefit from the Project. Therefore, Cadent should not be exposed to any costs or losses as a result of the Project, whether foreseeable or not. There is no objectively justifiable reason to allocate responsibility for damage or interruption caused by the</p>

	<p>Promoter such that the Promoter is responsible for foreseeable costs and losses and Cadent is responsible for unforeseeable costs and losses. In both instances, the losses are caused solely by the Promoter and regulated by the terms of the indemnity as identified above. On this point, money spent and costs incurred by Cadent is ultimately passed on to consumers in their energy bills. This is not appropriate in respect of losses caused by a third party.</p>
Existing paragraph 12 Access	<p>In addition to Cadent having access to its apparatus it also needs to have sufficient working areas.</p>
Existing paragraph 13 Arbitration	<p>Paragraph 13 of the protective provisions needs to regulate the matters that are subject to arbitration, and those that are not subject to arbitration. As drafted all disputes are referable to arbitration</p> <p>Cadent seek to carve out of the scope of arbitration existing paragraphs 5(2) and 6(1) which deal with facilities and rights granted to Cadent, paragraph 9(5) the adequacy of insurance and security and paragraph 7 dealing with the protection of Cadent's retained apparatus.</p> <p>The reason for these carve outs stem from Cadent's statutory functions and the legislation governing pipelines.</p> <ol style="list-style-type: none"> <li>1. Major Accident Hazard pipelines are regulated by the Pipeline Safety Regulations 1996. Under Regulation 15, it is an offence to cause damage to a pipeline as may give rise to a danger to persons and could result in enforcement action by the HSE.</li> <li>2. The Pipeline Safety Regulations 1996 requires that pipelines are operated so that the risks are as low as is reasonably practicable. In judging compliance with the Regulations, the HSE expects duty holders to apply relevant good practice as a minimum.</li> <li>3. Well established national standards and protocols for major accident hazard pipelines assist the HSE in ascertaining whether the risks incurred in working with such pipelines have been mitigated as much as reasonably practicable.</li> <li>4. These industry standards have the intention of protecting: a. integrity of the pipelines, Cadent's network and distribution of gas; b. safety of the local area surrounding gas pipelines; and c. safety of personnel involved in working near to gas pipelines.</li> </ol> <p>Cadent therefore requires an appropriate level of control and assurance that the industry regulatory standards will be complied with in connection with works in the vicinity of its apparatus. Failure to comply with industry safety standards, legal requirements or Health and Safety standards create a health and safety risk and could have potentially serious consequences for individuals or property located in proximity to the pipeline/s.</p> <ol style="list-style-type: none"> <li>6. Cadent has the benefit of a gas transporter licence (the Licence) under section 7 of the Gas Act 1986 (the Act). Cadent</li> </ol>

	<p>has a statutory duty under its Licence to ensure that these Regulations and protocols are complied with.</p> <p>For all of the above reasons, it is crucial that Cadent retains protection over how its network operates and how its network is protected. It is for Cadent, as an experienced gas undertaker under statutory and Licence obligations, to determine what measures are reasonable for the protection and integrity of its network and not a third party.</p>
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2.3 Cadent reserves the right to make further representations as to the status of the matters outlined in this submission as further drafts of the dDCO are submitted and as negotiations continue.

## APPENDIX: ANNOTATED PROTECTIVE PROVISIONS

### PART 4

#### FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

##### Application

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

##### Interpretation

2.—(1) In this Part of this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker to a level of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy shall include (but without limitation):

(a) Cadent as a Co-Insured;

(b) a cross liabilities clause;

(c) a waiver of subrogation in favour of Cadent; and

(c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means any of the following:

(a) a parent company guarantee from a parent company in favour of Cadent to cover the undertaker’s liability to Cadent to a cap of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a



form reasonably satisfactory to Cadent and where required by Cadent, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of Cadent Gas Limited to cover the undertaker's liability to Cadent for an amount of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Cadent); or

(c) evidence provided to Cadent's reasonable satisfaction that the Undertaker has a tangible net worth of not less than £50,000,000.00 (Fifty Million Pounds (or an equivalent financial measure));

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of Cadent to enable it to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any gas mains, pipes, pressure governors, ventilators, cathodic protection, cables or other apparatus belonging to or maintained by Cadent for the purpose of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to the apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"Cadent" means Cadent Gas Limited (Company Number 10080864) whose registered office is situate at Ashbrook Court, Prologis Park, Central Boulevard, Coventry CV7 8EP and any successor in title or assign including any successor to their license as a gas transporter under Part 1 of the Gas Act 1986(a);

"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 and/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;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by the undertaker (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"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, shall require the undertaker to submit for Cadent's approval a ground mitigation scheme;

"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;

**Commented [GWL1]:** Highlighted Additional clauses to be added to dDCO to deal with insurance and security

**Commented [GWL2]:** Registered office to be updated in dDCO with "Cadent Pilot Way Ansty Coventry CV7 9JU"

**Commented [GWL3]:** This should be Cadent not undertaker. Wording in dDCO to be updated

“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;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including construct, use, repair, alter, inspect, decommission or render unusable, renew or remove the apparatus;

“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; and

“parent company” means a parent company of the undertaker acceptable to Cadent and which shall have been approved by Cadent acting reasonably;

“rights” shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (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 paragraph 6(2) or otherwise; and/or
- (b) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (Cadent policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

### On Street Apparatus

3.—(1) Except for paragraphs 4 (apparatus of Cadent in stopped up streets), 6 (removal of apparatus) and 7 (facilities and rights for alternative apparatus) (in so far as paragraph 3(2) below applies), 8 (retained apparatus: protection), 9 (expenses) and 10 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, the other provisions of this Schedule do 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.

(2) Paragraphs 6 and 7 of this Part of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within adopted public highway.

(3) Notwithstanding article 29 or any other powers in the Order generally, s85 of the 1991 Act in relation to cost sharing and the regulations made thereunder shall not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

### Apparatus of Cadent in stopped up streets

4.—(1) Without prejudice to the generality of any other protection afforded to Cadent elsewhere in the Order, where any street is stopped up under article 11 (permanent stopping up of streets), if Cadent has any apparatus in the street or accessed via that street Cadent will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to Cadent, or will 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 but nothing in this paragraph shall affect any right of the undertaker or Cadent to require removal of the Apparatus under paragraph 5.

**Commented [GWL4]:** Additional words highlighted to be added to PPs in dDCO

**Commented [GWL5]:** Additional highlighted definition required in dDCO

**Commented [GWL6]:** Additional highlighted definition required in dDCO

**Commented [GWL7]:** This needs to refer to the Cadent guidance CD/SP/SSW/22 "Cadent's policies for safe working in the vicinity of Cadent's apparatus"

**Commented [GWL8]:** This should be updated to Cadent in the dDCO

**Commented [GWL9]:** This additional sub-paragraph needs to be added to the dDCO

- (2) Notwithstanding the temporary stopping up or diversion of any street under the powers of article 12 (temporary closure of streets), Cadent will be at liberty at all times to take all necessary access across any such stopped up street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.
- (3) The protective provisions in this Part of this Schedule apply and take precedence over article 34 of this Order which do not apply to Cadent.

#### **Acquisition of land**

(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 land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph 5(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affects 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 and variations 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 and/or secure the consent 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 works.

(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 and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and/or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by Cadent under paragraph 8 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 5(1).

(5) As a condition of an agreement between the parties in sub-paragraph 5(1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing

**Commented [GWL10]:** This highlighted wording needs to be replaced with " as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of". Cadent may need to undertake works that are wider than maintenance

easement and/or other interest of Cadent in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(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 [6] do not apply, the undertaker must:

(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) (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.

**Commented [GWL11]:** Paragraph 6 is removal of apparatus the current paragraph 5

**Commented [GWL12]:** New paragraph 5 to be added as per highlighted text

### Removal of apparatus

5.—(1) If, in the exercise of the agreement reached in accordance with paragraph 6 or in any other authorised manner, 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 rights and facilities referred to in sub-paragraph (2) have been provided, to the satisfaction of Cadent and in accordance with sub-paragraph (2) to (5) inclusive.

**Commented [GWL13]:** Amend dDCO with highlighted wording

**Commented [GWL14]:** Additional highlighted text to be inserted into dDCO

(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 placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account sub-paragraph 8(1) below) the necessary facilities and rights:

**Commented [GWL15]:** Additional highlighted text "move" to be inserted to cover diversions

(a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);

(b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and

(a) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(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

**Commented [GWL16]:** "Must" needs to be replaced with "may"

**Commented [GWL17]:** Revised highlighted wording to be added the emphasis needs to be on Cadent assisting

obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to do so.

(3) 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.

(4) 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) have been afforded to Cadent to its satisfaction, 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.

### Facilities and rights for alternative apparatus

6.—) 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 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.

(1) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph 8(1) above 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 (in Cadent's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph [15] (Arbitration) of this Part of this Schedule and the arbitrator shall 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.

### Retained apparatus: protection of Cadent

7. —(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to the undertaker a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to the undertaker under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;

- (a) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (b) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraph (1) applies until Cadent has given written approval of the plan so submitted.

**Commented [GWL18]:** Cadent must have absolute discretion whether it uses its CPO powers and highlighted additional wording to be added

**Commented [GWL19]:** Highlighted additional text to be added to dDCO. Cadent must have the necessary rights for the alternative apparatus before it decommissions existing apparatus

**Commented [GWL20]:** As above reference to decommissioned to be added.

**Commented [GWL21]:** As above

**Commented [GWL22]:** This should refer to Cadent not the undertaker

**Commented [GWL23]:** As above

- (4) Any approval of Cadent required under sub-paragraph (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
  - (b) must not be unreasonably withheld or delayed.
- (5) In relation to any work to which sub-paragraph (1) applies, Cadent may require such modifications to be made to the plans 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.
- (6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by Cadent for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Cadent will be entitled to watch and inspect the execution of those works.
- (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 authorised works (or any relevant part thereof) for which protective works are required and the undertaker must give 56 days’ notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (8) If Cadent in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).
- (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 authorised works, a new plan, 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.
- (10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must—
- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
  - (b) comply with sub-paragraph (11) at all times.
- (11) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22” and HSE’s “HS(~G)47 Avoiding Danger from underground services”.
- (12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that 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 9.

### Expenses

8.—(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 incurred by the undertaker 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

**Commented [GWL24]:** Reference to reasonable not appropriate. References to reasonable are used in the sub paragraphs referenced and it is not appropriate to have another test of reasonableness

**Commented [GWL25]:** As above this text needs to be updated with Cadent's guidance

**Commented [GWL26]:** This should be Cadent

consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by the undertaker as a consequence of Cadent—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under 6(3); and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (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;
- (g) Cadent watching and inspecting the execution of those works pursuant to sub-paragraph 7(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) or article 35 (apparatus and rights of statutory undertakers in stopped up streets) 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.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 50 (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 where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) 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.

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

- (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
- (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.

**Commented [GWL27]:** This needs to also include the costs incurred in the negotiation of such rights

**Commented [GWL28]:** This should be Cadent

**Commented [GWL29]:** Highlighted additional text to be added as the cost of any watching brief needs to be recoverable

**Commented [GWL30]:** Highlighted wording to be added it may be possible to obtain the existing type of apparatus but it may not be appropriate

(5) An amount which apart from this sub-paragraph would be payable to an undertaker 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.

Commented [GWL31]: This should refer to Cadent

## Indemnity

9.—(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 works 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 him) 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 works) 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—

Commented [GWL32]: Highlighted wording to be added to make it clear that this extends to works to Cadent's apparatus

- (a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred 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.

(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 workmanlike manner or in a manner that does not accord with the approved plan.

Commented [GWL33]: Highlighted text to be added

- (3) 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 neglect or default of Cadent, its officers, servants, contractors or agents; and
  - (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 9.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement 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.

(5) The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised works on any land owned by Cadent or in respect of which Cadent has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of Cadent's apparatus until the following conditions are satisfied:

- (a) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided



evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and Cadent has confirmed the same to the undertaker in writing; and

- (b) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Cadent that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and Cadent has confirmed the same in writing to the undertaker.

(6) In the event that the undertaker fails to comply with 9(5) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent Cadent from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

### Enactments and agreements

10. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule shall 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 Cadent on the date on which this Order is made.

### Co-operation

11.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 6(2) Cadent makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker shall 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 shall 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 to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### Access

12. If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the 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

13. Save for differences or disputes arising under sub-paragraphs 5(2), 5(4), 6(1), 9(5) and paragraph 7 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 referred to and settled by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institute of Civil Engineers and in settling any difference or dispute, the arbitrator must have regard to the requirements of Cadent for ensuring the safety, economic and efficient operation of Cadent's apparatus.

**Commented [GWL34]:** Highlighted wording to be added to deal with insurance and security

**Commented [GWL35]:** Highlighted additional text to be added to dDCO. In addition to Cadent having access to its apparatus it also needs to have sufficient working areas

**Commented [GWL36]:** There are certain matters which are not appropriate to be delegated to arbitration and highlighted text needs to be added to effect these carve outs

**Commented [GWL37]:** Text in paragraph 13 to be updated with highlighted text

## Notices

14. The plan and scheme submitted to Cadent by the undertaker pursuant to paragraph 7(1) must be sent to Cadent Gas Limited Plant Protection at [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

**Commented [GWLG38]:** Following additional wording to be inserted:

copied by e-mail to  
[toby.feirn@cadentgas.com](mailto:toby.feirn@cadentgas.com)  
and sent to the General  
Counsel Department at  
Cadent's registered office