

## SCHEDULE 17

### Protective Provisions

## PART 3

### For the Protection of Cadent Gas Limited as Gas Undertaker

#### Application

**28.** For the protection of the Cadent referred to in this Part the following provisions will, unless otherwise agreed in writing between the promoter and Cadent, have effect.

#### Commencement Information

**II** Sch. 17 para. 28 in force at 1.1.2022, see [art. 1](#)

#### Interpretation

**29.** In this Part—

“1991 Act” means the New Roads and Street Works Act 1991;

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

“apparatus” means any mains, pipes, pressure governors, ventilators cathodic protections cables or other apparatus belonging to or maintained by Cadent for the purposes of gas distribution and 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 distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to 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 includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“Cadent” means Cadent Gas Limited, and/or its successors in title and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986

“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning save that for the purpose of this part only the term commence shall include operations consisting site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purposes of assessing ground conditions, diversion and laying of services, erection of any temporary means of enclosure and temporary hard standing;

“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 Cadent (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 promoter 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;

“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 retain, lay, construct, maintain, protect, access, enlarge, replace, use, repair, alter, inspect, renew, decommission or render unusable 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;

“promoter” means the undertaker as defined in article 2 of this Order;

“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 promoter under paragraph 33(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 33(2) or otherwise; or
- (c) include any of the activities that are referred to in paragraph 6 and 7 of SSW22 (“Specification for safe working in the vicinity of Cadent assets – requirements for third parties”).

**Commencement Information**

**12** Sch. 17 para. 29 in force at 1.1.2022, see [art. 1](#)

**On Street Apparatus**

**30.**—(1) Except for paragraphs 31 (apparatus of undertakers in stopped up streets), 33 (removal of apparatus) in so far as sub-paragraph 30(2) applies, 34 (facilities and rights for alternative apparatus) in so far as sub-paragraph 30(2) applies, 35 (retained apparatus: protection), 36 (expenses) and 37 (compensation) 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 Cadent, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the promoter and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraphs 34 and 35 of this Schedule apply to diversions 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 existing adopted public highway

(3) Notwithstanding Art 25(5) or any other powers in the Order generally, s85 of the 1991 Act in relation to costs sharing and the powers in respect of cost sharing generally including the regulations made thereunder does not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

**Commencement Information**

**I3** Sch. 17 para. 30 in force at 1.1.2022, see [art. 1](#)

**Apparatus of Undertakers in stopped up streets**

**31.** Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (stopping up of streets), Cadent will be at liberty to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway 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 highway.

**Commencement Information**

**I4** Sch. 17 para. 31 in force at 1.1.2022, see [art. 1](#)

**Acquisition of land**

**32.—(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 promoter may not acquire or appropriate any land interest or apparatus or appropriate, acquire, extinguish, interfere with or override any easement and/or other interest of Cadent otherwise than by agreement

(2) As a condition of agreement between the parties in sub-paragraph (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 promoter) that are subject to the requirements of this Part that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of the undertaker and/or affects the provisions of any enactment or agreement regulating the relations between Cadent and the promoter in respect of any apparatus laid or erected in land belonging to or secured by the promoter, the promoter must as Cadent reasonably and necessarily requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the promoter acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by the undertaker, and it will be the responsibility of the promoter 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 promoter and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part 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 the undertaker and/or other enactments relied upon by the undertaker as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by the undertaker under paragraph 35 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph (1).

**Commencement Information**

**I5** Sch. 17 para. 32 in force at 1.1.2022, see [art. 1](#)

**Removal of apparatus**

**33.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 32 or in any other authorised manner, the promoter acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of Cadent in accordance with sub-paragraph (2) to (5) inclusive.

(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 promoter 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 remove any of its apparatus) the promoter must, subject to sub-paragraph (3), afford to Cadent to its satisfaction (taking into account paragraph 34(1) below) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the promoter; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the promoter, or the promoter 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 promoter, as soon as possible take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, with the promoter's assistance if required by Cadent, save that this obligation does not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the promoter under this Part must be constructed in such manner and in such line or situation as may be agreed between Cadent and the promoter.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the promoter to be removed under the provisions of this Part of this Schedule.

**Commencement Information**

**I6** Sch. 17 para. 33 in force at 1.1.2022, see [art. 1](#)

**Facilities and rights for alternative apparatus**

**34.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the promoter affords to or secures for Cadent facilities and rights in land for the construction, use, maintenance and

protection 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 promoter 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 removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the promoter and agreed with Cadent under sub-paragraph (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 removed and the terms and conditions to which those facilities and rights are subject in the matter may be referred to arbitration in accordance with paragraph 41 (Arbitration) of this Part and the arbitrator may make such provision for the payment of compensation by the promoter to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**Commencement Information**

**17** Sch. 17 para. 34 in force at 1.1.2022, see [art. 1](#)

**Retained apparatus: protection Gas Undertakers**

**35.**—(1) The promoter must provide technical information relevant to any specified works to Cadent as soon as reasonably practicable after it becomes available, and will seek to liaise with Cadent as early as reasonably practicable regarding the specified works.

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

(3) The plan to be submitted to Cadent under sub-paragraph (2) 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;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(4) The promoter must not commence any works to which sub-paragraphs (2) and (3) apply until Cadent has given written approval of the plan so submitted.

(5) Any approval of Cadent required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (1) and/or (2) apply, 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 provided that such modifications are requested by Cadent within a period of 56 days, unless otherwise agreed between the parties, beginning with the date on which the plan under sub-paragraph (1) is submitted to it. For the avoidance of

doubt, provided that any further iterations of the plan submitted to Cadent for approval as a result of modifications required under this paragraph are not materially different to the modifications previously made by Cadent, any further required modifications will be made by the promoter as soon as reasonably practicable thereafter and in any event within 56 days of receipt of any further plans.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (2) or as relevant sub paragraph (6), as approved or as amended from time to time by agreement between the promoter and Cadent and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) 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.

(8) Where Cadent requires any protective works to be carried out by itself or by the promoter (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 Cadent must give 56 days' notice of such works from the date of submission of a plan pursuant to sub-paragraph (2) or (3) (except in an emergency).

(9) If Cadent in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the promoter, reasonably requires the removal of any apparatus and gives written notice to the promoter 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 promoter under paragraph 34(2).

(10) Nothing in this paragraph precludes the promoter 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.

(11) The promoter 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 (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order the promoter must comply with Cadent's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of Cadent's, High pressure Gas pipelines and associated installation requirements for third parties SPGD//SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(13) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the promoter must 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 36.

**Commencement Information**

**18** Sch. 17 para. 35 in force at 1.1.2022, see [art. 1](#)

**Expenses**

**36.**—(1) Subject to the following provisions of this paragraph, the promoter must pay to Cadent on demand all charges, costs and expenses reasonably and properly anticipated or 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 works as are referred to in this Part including without limitation—

- (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 incurred by Cadent as a consequence of Cadent;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 33(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 necessary 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.

(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 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 promoter or, in default of agreement, is not determined by arbitration in accordance with article 38 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances 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 promoter.

(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.

(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.

#### Commencement Information

**19** Sch. 17 para. 36 in force at 1.1.2022, see [art. 1](#)

### Compensation

**37.**—(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 or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the promoter or in consequence of any act or default of the promoter (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the promoter under this Part 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 or Cadent incurs any liability as a result of the transfer of undertaking under article 6, the promoter will—

- (a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) compensate 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 promoter or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision will not (unless sub-paragraph (3) applies), excuse the promoter 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.

(3) Nothing in sub-paragraph (1) imposes any liability on the promoter 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 carried out by Cadent as an assignee, transferee or lessee of the promoter with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 6 (benefit of the order) 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-paragraph 3(b) will be subject to the full terms of this Part including this paragraph 37.

(4) Cadent must give the promoter 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 promoter and considering their representations.

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**Commencement Information**

**I10** Sch. 17 para. 37 in force at 1.1.2022, see [art. 1](#)

**Enactments and agreements**

**38.** Save to the extent provided for to the contrary elsewhere in this Part or by agreement in writing between Cadent and the promoter, nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the promoter and Cadent in respect of any apparatus laid or erected in land belonging to the promoter on the date on which this Order is made.

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**Commencement Information**

**I11** Sch. 17 para. 38 in force at 1.1.2022, see [art. 1](#)

**Co-operation**

**39.—(1)** Where in consequence of the proposed construction of any of the authorised works, the promoter or an undertaker requires the removal of apparatus under paragraph 33(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraph 35, the promoter 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 promoter for that purpose.

(2) For the avoidance of doubt whenever the undertaker'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.

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**Commencement Information**

**I12** Sch. 17 para. 39 in force at 1.1.2022, see [art. 1](#)

**Access**

**40.** If in consequence of the agreement reached in accordance with paragraph 32(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the promoter must provide such alternative 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.

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**Commencement Information**

**I13** Sch. 17 para. 40 in force at 1.1.2022, see [art. 1](#)

**Arbitration**

**41.** Save for differences or disputes arising under paragraph 33(2), 33(4), 34(1), 35 and 36 any difference or dispute arising between the promoter and Cadent under this Part must, unless otherwise agreed in writing between the promoter and Cadent, be determined by arbitration in accordance with article 38 (arbitration).

**Changes to legislation:** There are currently no known outstanding effects for the The Norfolk Boreas Offshore Wind Farm Order 2021, PART 3. (See end of Document for details)

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**Commencement Information**

**I14** Sch. 17 para. 41 in force at 1.1.2022, see [art. 1](#)

**Notices**

**42.** The plans submitted to Cadent by the promoter pursuant to paragraph 35 must be sent to Cadent Plant Protection at [plantprotection@cadent.com](mailto:plantprotection@cadent.com) or such other address as Cadent may from time to time appoint instead for that purpose and notify to the promoter in writing.

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**Commencement Information**

**I15** Sch. 17 para. 42 in force at 1.1.2022, see [art. 1](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Norfolk Boreas Offshore Wind Farm Order 2021, PART 3.