

SCHEDULES

SCHEDULE 12

PROTECTIVE PROVISIONS

PART 5

FOR THE PROTECTION OF CADENT GAS LIMITED

Interpretation

52.—(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 (including works carried out under article 17 (protective works to buildings)) by or on behalf of Network Rail or in consequence of any act or default of Network Rail (or any person employed or authorised by Network Rail) in the course of carrying out such works, including without limitation works carried out by Network Rail 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 or decommissioning 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, Network Rail will—

- (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
- (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 Network Rail 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 Network Rail from liability under the provisions of 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) shall impose any liability on Network Rail in respect of any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents.

(4) Cadent must give Network Rail 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 Network Rail and considering their representations.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(5) If Network Rail has transferred the benefit of the Order to another undertaking pursuant to Article 31 of the Order no person or body who is not a licensed operator under the Railway Act 1993 must commence construction (or 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 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.