

SCHEDULES

SCHEDULE 12 **E+W**

PROTECTIVE PROVISIONS

PART 4 **E+W**

FOR THE PROTECTION OF HIGH SPEED TWO (HS2) LIMITED

Indemnity

42.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the specified works the company becomes liable or incurs any increased liability to pay any amount to any third party, the undertaker will indemnify the company for any expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the company, by reason or in consequence of the company becoming liable or its liability increasing to any third party as aforesaid other than arising from any default of the company.

(2) The fact that any act or thing may have been done by the company on behalf of the undertaker or in accordance with a plan approved by the company or in accordance with any requirement of the company or under its supervision will not, unless sub-paragraph (3) applies, excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the company 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.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any expenses, loss, demands, proceedings, damages, claims, penalty or costs to the extent that it is attributable to the neglect or default of the company, its officers, servants, contractors or agents;
- (b) any part of the authorised development carried out by the company in the exercise of any functions conferred by this Order pursuant to a transfer or grant under article 8 (consent to transfer benefit of Order).

(4) The company 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.

(5) The company must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) The company must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within the company's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of the company's control and if reasonably requested to do so by the undertaker the company must provide an explanation of how the claim has been minimised, where relevant.

Changes to legislation: There are currently no known outstanding effects for the The M42 Junction
6 Development Consent Order 2020, Cross Heading: Indemnity. (See end of Document for details)

Commencement Information

II Sch. 12 para. 42 in force at 11.6.2020, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The M42 Junction 6 Development Consent Order 2020, Cross Heading: Indemnity.