

SCHEDULE 12

Article 39

Protective provisions

PART 1

Protection for Environment Agency and drainage authorities

1. The provisions of this Part have effect for the protection of a drainage authority unless otherwise agreed in writing between the relevant undertaker and the drainage authority.

Commencement Information

II Sch. 12 Pt. 1 para. 1 in force at 7.9.2016, see [art. 1\(2\)](#)

2. In this Part—

“construction” includes execution, placing, altering, replacing, relaying and removal; and
“construct” and “constructed” must be construed accordingly;

“drainage authority” means—

- (a) in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991; and
- (b) in relation to a main river or any sea defence work, the Environment Agency;

“drainage work” means any watercourse other than the River Humber and includes any land that provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring;

“ordinary watercourse” has the meaning given in the Land Drainage Act 1991(1);

“plans” includes sections, drawings, specifications and method statements;

“relevant undertaker” means—

- (a) in relation to specified work that is Project A works or associated development or ancillary works relating to Project A works, Optimus Wind;
- (b) in relation to specified work that is Project B works or associated development or ancillary works relating to Project B works, Breesea; and
- (c) in relation to specified work that is shared works or associated development or ancillary works relating to shared works, Optimus Wind and Breesea;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity, or quality of water in any watercourse; or
- (c) affect the conservation, distribution or use of water resources.

(1) See section 72(1).

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Commencement Information

I2 Sch. 12 Pt. 1 para. 2 in force at 7.9.2016, see [art. 1\(2\)](#)

3.—(1) Before beginning to construct any specified work, the relevant undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 11.

(3) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval(or submission of further particulars if required by the drainage authority under sub-paragraph (1)) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work or, where the drainage authority is the Environment Agency, for the protection of water resources for the prevention of pollution or in the discharge of its environmental duties.

(4) The drainage authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

Commencement Information

I3 Sch. 12 Pt. 1 para. 3 in force at 7.9.2016, see [art. 1\(2\)](#)

4. Without limiting paragraph 3, the requirements which the drainage authority may make under that paragraph include conditions requiring the relevant undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

Commencement Information

I4 Sch. 12 Pt. 1 para. 4 in force at 7.9.2016, see [art. 1\(2\)](#)

5.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 4, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and
- (b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

- (2) The relevant undertaker must give to the drainage authority—
- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
 - (b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If the drainage authority reasonably requires, the relevant undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part, the drainage authority may by notice in writing require the relevant undertaker at the relevant undertaker's expense to comply with the requirements of this Part or (if the relevant undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the relevant undertaker, the relevant undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice, and any expenditure incurred by it in so doing is recoverable from the relevant undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

Commencement Information

I5 Sch. 12 Pt. 1 para. 5 in force at 7.9.2016, see [art. 1\(2\)](#)

6.—(1) Subject to sub-paragraph (5) the relevant undertaker must from the commencement of the construction of any specified work maintain in good repair and condition and free from obstruction any drainage work that is situated within the limits of deviation on land held by the relevant undertaker for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work that the relevant undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the relevant undertaker to repair and restore the work, or any part of such work, or (if the relevant undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the relevant undertaker, the relevant undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the relevant undertaker.

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(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works that are vested in the drainage authority or that the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part.

Commencement Information

I6 Sch. 12 Pt. 1 para. 6 in force at 7.9.2016, see [art. 1\(2\)](#)

7. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the relevant undertaker to the reasonable satisfaction of the drainage authority and, if the relevant undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the relevant undertaker the expense reasonably incurred by it in doing so.

Commencement Information

I7 Sch. 12 Pt. 1 para. 7 in force at 7.9.2016, see [art. 1\(2\)](#)

8. The relevant undertaker must indemnify the drainage authority in respect of all costs, charges and expenses that the drainage authority may reasonably incur, have to pay or may sustain—

- (a) in the examination or approval of plans under this Part;
- (b) in inspecting the construction of any specified work or any protective works required by the drainage authority under this Part; and
- (c) in carrying out of any surveys or tests by the drainage authority that are reasonably required in connection with the construction of the specified work.

Commencement Information

I8 Sch. 12 Pt. 1 para. 8 in force at 7.9.2016, see [art. 1\(2\)](#)

9.—(1) Without limiting the other provisions of this Part, the relevant undertaker must indemnify the drainage authority in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, recovered from or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such land; and
- (d) where the drainage authority is the Environment Agency, inadequate water quality in any watercourse or other surface waters or in any groundwater,

that is caused by the construction of any specified work or any act or omission of the relevant undertaker, its contractors, agents or employees whilst engaged on the work.

(2) The drainage authority must give to the relevant undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the relevant undertaker which agreement must not be unreasonably withheld or delayed.

Commencement Information

I9 Sch. 12 Pt. 1 para. 9 in force at 7.9.2016, see [art. 1\(2\)](#)

10. The fact that any work or thing has been executed or done by the relevant undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the relevant undertaker from any liability under this Part.

Commencement Information

I10 Sch. 12 Pt. 1 para. 10 in force at 7.9.2016, see [art. 1\(2\)](#)

11. Any dispute between the relevant undertaker and the drainage authority under this Part, if the parties agree, must be determined by arbitration under article 41 (arbitration), but otherwise must be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Business, Energy and Industrial Strategy acting jointly on a reference to them by the relevant undertaker or the drainage authority, after notice in writing by one to the other.

Commencement Information

I11 Sch. 12 Pt. 1 para. 11 in force at 7.9.2016, see [art. 1\(2\)](#)

PART 2

Protection for Network Rail Infrastructure Limited, etc.

1. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

Commencement Information

I12 Sch. 12 Pt. 2 para. 1 in force at 7.9.2016, see [art. 1\(2\)](#)

2. In this Part—

“construction” includes execution, placing, alteration and reconstruction; and “construct” and “constructed” have corresponding meanings;

“engineer” means an engineer appointed by Network Rail for the purposes of this Order;

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“network licence” means the network licence, as amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of the powers in section 8 of the Railways Act 1993(2);

“Network Rail” means—

- (a) Network Rail Infrastructure Limited (company number 2904587); and
- (b) any associated company of Network Rail Infrastructure Limited that holds property for railway purposes,

and for the purpose of paragraph (b) “associated company” means any company that is (within the meaning of section 1159 of the Companies Act 2006(3)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993(4)) or station lease;

“railway property” means—

- (a) any railway belonging to Network Rail;
- (b) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (c) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment;

“relevant undertaker” means—

- (a) in relation to specified work that is Project A works or associated development or ancillary works relating to Project A works, Optimus Wind;
- (b) in relation to specified work that is Project B works or associated development or ancillary works relating to Project B works, Breesea; and
- (c) in relation to specified work that is shared works or associated development or ancillary works relating to shared works, Optimus Wind and Breesea;

“specified work” means so much of any of the authorised development as is situated on, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

Commencement Information

I13 Sch. 12 Pt. 2 para. 2 in force at 7.9.2016, see [art. 1\(2\)](#)

3.—(1) Where under this Part Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) [1993 c.43](#). Section 8 was amended by paragraph 4 of Schedule 17 and Part 4 of Schedule 31 to the Transport Act 2000 ([c.38](#)), paragraphs 3 and 5 of Schedule 2 to the Railways and Transport Safety Act 2003 ([c.20](#)), paragraph 3 of Schedule 1 and Part 1 of Schedule 13 to the Railways Act 2005 ([c.14](#)) and Part 1 of Schedule 1 to [S.I. 2015/1682](#).

(3) [2006 c.46](#).

(4) “Access agreement” is defined in section 83. The definition was amended by section 230 of the Transport Act 2000.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the relevant undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

Commencement Information

I14 Sch. 12 Pt. 2 para. 3 in force at 7.9.2016, see [art. 1\(2\)](#)

4.—(1) The undertaker must not exercise the powers conferred by article 17 (authority to survey and investigate land) or section 11(3) of the 1965 Act (powers of entry) in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic code communications operators: preliminary notices) of the 1990 Act⁽⁵⁾ or article 28 (statutory undertakers) in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, its consent must not be unreasonably withheld but may be given subject to reasonable conditions.

Commencement Information

I15 Sch. 12 Pt. 2 para. 4 in force at 7.9.2016, see [art. 1\(2\)](#)

5.—(1) The relevant undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer, and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if, by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail, the engineer has not intimated disapproval of those plans and the grounds of disapproval—

- (a) the relevant undertaker may serve on the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date on which the engineer receives written notice from the relevant undertaker; and
- (b) if by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as supplied.

(5) Section 272 was amended by paragraph 103 of Schedule 17 to the Communications Act 2003.

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(3) If, by the end of the period of 28 days beginning with the date on which written notice was served on the engineer under sub-paragraph (2), Network Rail gives notice to the relevant undertaker that Network Rail desires itself to construct any part of a specified work that in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail, then, if the relevant undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the relevant undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the relevant undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) that in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using them (including any relocation, de-commissioning or removal of works, apparatus or equipment necessitated by a specified work or the comfort and safety of passengers who may be affected by the specified work), and—

- (a) such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the relevant undertaker, if Network Rail so desires, at the expense of the relevant undertaker in either case, with all reasonable dispatch; and
- (b) the relevant undertaker must not commence the construction of the specified work until the engineer has notified the relevant undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

Commencement Information

I16 Sch. 12 Pt. 2 para. 5 in force at 7.9.2016, see [art. 1\(2\)](#)

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the relevant undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part imposes—

- (a) any liability on the relevant undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents; or
- (b) any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the relevant undertaker or its servants, contractors or agents.

Commencement Information

I17 Sch. 12 Pt. 2 para. 6 in force at 7.9.2016, see [art. 1\(2\)](#)

7. The relevant undertaker must—
- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
 - (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

Commencement Information

I18 Sch. 12 Pt. 2 para. 7 in force at 7.9.2016, see [art. 1\(2\)](#)

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

Commencement Information

I19 Sch. 12 Pt. 2 para. 8 in force at 7.9.2016, see [art. 1\(2\)](#)

9.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail.

(2) If Network Rail gives to the relevant undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the relevant undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs that may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(3) If during the construction of a specified work by the relevant undertaker, Network Rail gives notice to the relevant undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail, then, if the relevant undertaker decides that part of the specified work is to be constructed,—

- (a) Network Rail may assume construction of that part of the specified work; and
- (b) the relevant undertaker must, notwithstanding any approval of a specified work under paragraph 5(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss that it may suffer by reason of the execution by Network Rail of that part of the specified work.

(4) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the relevant undertaker may reasonably require.

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(5) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing the saving must be set off against any sum payable by the relevant undertaker to Network Rail under this paragraph.

Commencement Information

I20 Sch. 12 Pt. 2 para. 9 in force at 7.9.2016, see [art. 1\(2\)](#)

10. The relevant undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the relevant undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the relevant undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, guards and other persons whom it may be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions that may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services that may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified work, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

Commencement Information

I21 Sch. 12 Pt. 2 para. 10 in force at 7.9.2016, see [art. 1\(2\)](#)

11.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the authorised development, where such interference is of a level that adversely affects the safe operation of Network Rail’s apparatus;

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) that are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that the EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the relevant undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the relevant undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

- (4) In order to facilitate the relevant undertaker's compliance with sub-paragraph (3)—
- (a) the relevant undertaker must consult Network Rail as early as reasonably practicable to identify all Network Rail's apparatus that may be at risk of EMI, and thereafter must continue to consult Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
 - (b) Network Rail must make available to the relevant undertaker all information in the possession of Network Rail reasonably requested by the relevant undertaker in respect of Network Rail's apparatus identified pursuant to paragraph (a); and
 - (c) Network Rail must allow the relevant undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to paragraph (a).
- (5) In any case where it is established that EMI can reasonably be prevented only by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution selected are in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to this sub-paragraph.
- (6) If, at any time before the commencement of commercial operation of the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI, then the relevant undertaker must immediately on receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) immediately cease to use (or procure the cessation of use of) the relevant undertaker's apparatus causing the EMI until all measures necessary have been taken to remedy the EMI by way of modification to the source of the EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.
- (7) In the event of EMI having occurred—
- (a) the relevant undertaker must afford reasonable facilities to Network Rail for access to the relevant undertaker's apparatus in the investigation of the EMI;
 - (b) Network Rail must afford reasonable facilities to the relevant undertaker for access to Network Rail's apparatus in the investigation of the EMI; and
 - (c) Network Rail must make available to the relevant undertaker any additional material information in its possession reasonably requested by the relevant undertaker in respect of Network Rail's apparatus or the EMI.
- (8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—
- (a) Network Rail must allow the relevant undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
 - (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the relevant undertaker in accordance with paragraph 6.
- (9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.
- (10) For the purpose of paragraph 10(a), any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that sub-paragraph.

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(11) In relation to any dispute arising under this paragraph, the reference in article 41 (arbitration) to an arbitrator to be agreed must be read as a reference to an arbitrator being a member of the Institution of Engineering and Technology to be agreed.

Commencement Information

I22 Sch. 12 Pt. 2 para. 11 in force at 7.9.2016, see [art. 1\(2\)](#)

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the relevant undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the relevant undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

Commencement Information

I23 Sch. 12 Pt. 2 para. 12 in force at 7.9.2016, see [art. 1\(2\)](#)

13. The relevant undertaker—

- (a) must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail; and
- (b) must comply with Network Rail’s reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

Commencement Information

I24 Sch. 12 Pt. 2 para. 13 in force at 7.9.2016, see [art. 1\(2\)](#)

14. Any additional expenses that Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days’ previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the relevant undertaker, be repaid by the relevant undertaker to Network Rail.

Commencement Information

I25 Sch. 12 Pt. 2 para. 14 in force at 7.9.2016, see [art. 1\(2\)](#)

15.—(1) The relevant undertaker—

- (a) must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part that may be occasioned to or reasonably incurred by Network Rail by reason of—
 - (i) the construction, maintenance or failure of a specified work; or
 - (ii) any act or omission of the relevant undertaker or of any person in its employ or of its contractors or others whilst engaged on a specified work; and

- (b) indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission.
- (2) The fact that any act or thing may have been done by Network Rail on behalf of the relevant undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the supervision of the engineer does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the relevant undertaker from any liability under sub-paragraph (1).
- (3) Network Rail must give the relevant undertaker reasonable notice of any such claim or demand, and no settlement or compromise of such a claim or demand may be made without the prior consent of the relevant undertaker.
- (4) The sums payable by the relevant undertaker under sub-paragraph (1) must include a sum equivalent to the relevant costs.
- (5) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (4) that relates to the relevant costs of that train operator.
- (6) The obligation under sub-paragraph (4) to pay Network Rail the relevant costs may, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (5).
- (7) In this paragraph—
- “relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any act or omission as mentioned in sub-paragraph (1);
- “train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

Commencement Information

I26 Sch. 12 Pt. 2 para. 15 in force at 7.9.2016, see [art. 1\(2\)](#)

16. Network Rail must, on receipt of a request from the relevant undertaker, from time to time provide the relevant undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the relevant undertaker is or will become liable under this Part (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the relevant undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part (including any claim relating to the relevant costs).

Commencement Information

I27 Sch. 12 Pt. 2 para. 16 in force at 7.9.2016, see [art. 1\(2\)](#)

17. In the assessment of any sums payable to Network Rail under this Part, no account must be taken of any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the relevant undertaker under this Part or increasing the sums so payable.

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Commencement Information

I28 Sch. 12 Pt. 2 para. 17 in force at 7.9.2016, see [art. 1\(2\)](#)

18. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

Commencement Information

I29 Sch. 12 Pt. 2 para. 18 in force at 7.9.2016, see [art. 1\(2\)](#)

19. The undertaker must give written notice to Network Rail where any application is proposed to be made by the undertaker for the Secretary of State's consent under article 35 (transfer of benefit of Order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

Commencement Information

I30 Sch. 12 Pt. 2 para. 19 in force at 7.9.2016, see [art. 1\(2\)](#)

20. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 40 (certification of plans, etc.), provide a set of those plans to Network Rail in the form of a computer disc with read-only memory.

Commencement Information

I31 Sch. 12 Pt. 2 para. 20 in force at 7.9.2016, see [art. 1\(2\)](#)

PART 3

Protection for operators of electronic communications code networks

1. The provisions of this Part have effect for the protection of an operator unless otherwise agreed in writing between the undertaker and the operator.

Commencement Information

I32 Sch. 12 Pt. 3 para. 1 in force at 7.9.2016, see [art. 1\(2\)](#)

2. In this Part—

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“conduit system” has the same meaning as in the electronic communications code; and references to providing a conduit system must be construed in accordance with paragraph 1(3A) of the code⁽⁶⁾;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽⁷⁾;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network that the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“operator” means the operator of an electronic communications code network;

“relevant undertaker” means—

- (a) in relation to authorised development that is Project A works or associated development or ancillary works relating to Project A works, Optimus Wind;
- (b) in relation to authorised development that is Project B works or associated development or ancillary works relating to Project B works, Breesea; and
- (c) in relation to authorised development that is shared works or associated development or ancillary works relating to shared works, Optimus Wind and Breesea.

Commencement Information

I33 Sch. 12 Pt. 3 para. 2 in force at 7.9.2016, see [art. 1\(2\)](#)

3. Paragraph 23 of Schedule 2 to the Telecommunications Act 1984⁽⁸⁾ (which provides a procedure for certain cases where works involve the alteration of electronic communications apparatus) applies in relation to the exercise of the powers of article 28 (statutory undertakers).

Commencement Information

I34 Sch. 12 Pt. 3 para. 3 in force at 7.9.2016, see [art. 1\(2\)](#)

4.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development, its construction or any subsidence resulting from that development—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator,

the relevant undertaker must—

⁽⁶⁾ Paragraph 1(3A) was added to the code (Schedule 2 to the Telecommunications Act 1984) by paragraph 4 of Schedule 3 to the Communications Act 2003.

⁽⁷⁾ “The electronic communications code” is defined in section 106(1).

⁽⁸⁾ 1984 c.12.

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- (c) bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply;
- (d) make reasonable compensation to an operator for loss sustained by it; and
- (e) indemnify an operator against claims, demands, proceedings, costs, damages and expenses that may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any claim or demand, and no settlement or compromise of the claim or demand may be made without the consent of the undertaker which, if it withholds consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 41 (arbitration).

Commencement Information

I35 Sch. 12 Pt. 3 para. 4 in force at 7.9.2016, see [art. 1\(2\)](#)

5. This Part does not apply to any apparatus in respect of which the relations between the undertaker and an operator are regulated by Part 3 of the 1991 Act.

Commencement Information

I36 Sch. 12 Pt. 3 para. 5 in force at 7.9.2016, see [art. 1\(2\)](#)

PART 4

Protection for utility undertakers

1. The provisions of this Part have effect for the protection of a utility undertaker unless otherwise agreed in writing between the undertaker and the utility undertaker in question.

Commencement Information

I37 Sch. 12 Pt. 4 para. 1 in force at 7.9.2016, see [art. 1\(2\)](#)

2. In this Part—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus”—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, means electric lines or electrical plant (as defined in the 1989 Act⁽⁹⁾) belonging to or maintained by the utility undertaker;

⁽⁹⁾ See section 64. The definition of “electrical plant” was amended by paragraph 38(3) of Schedule 6 to the Utilities Act 2000 (c.27).

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- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, means any mains, pipes or other apparatus belonging to or maintained by the utility undertaker for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term, means—
 - (i) mains, pipes or other apparatus belonging to, or maintained by, the utility undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991⁽¹⁰⁾;
- (d) in the case of a utility undertaker within paragraph (d) of the definition of that term—
 - (i) means—
 - (aa) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991; and
 - (bb) any sewer that is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act⁽¹¹⁾ or an agreement to adopt made under section 104 of that Act; and
 - (ii) includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and in each case includes any structure in which apparatus is or is to be lodged or that gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or on land;

“relevant undertaker” means—

- (a) in relation to works that are Project A works or associated development or ancillary works relating to Project A works, Optimus Wind;
- (b) in relation to works that are Project B works or associated development or ancillary works relating to Project B works, Breesea; and
- (c) in relation to works that are shared works or associated development or ancillary works relating to shared works, Optimus Wind and Breesea;

“utility undertaker” means—

- (a) a licence holder within the meaning of Part 1 of the 1989 Act;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽¹²⁾;
- (c) a water undertaker⁽¹³⁾; and
- (d) a sewerage undertaker,

for the area of the authorised development and, in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained; but does not include—

⁽¹⁰⁾ Section 51A was inserted by section 92(1) of the Water Act 2003.

⁽¹¹⁾ Section 102(4) was amended by section 96 of the Water Act 2003. Section 104 was amended by section 96 of, and Part 3 of Schedule 9 to, the Water Act 2003 and by section 42(3) of the Flood and Water Management Act 2010.

⁽¹²⁾ 1986 c.44. “Gas transporter” is defined in section 7. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45) and was further amended by section 76 of the Utilities Act 2000.

⁽¹³⁾ “Water undertaker” is defined in Schedule 1 to the Interpretation Act 1978.

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- (e) Anglian Water Services Limited (company number 02366656);
- (f) Centrica plc (company number 03033654);
- (g) VPI Immingham LLP (registered number OC300980);
- (h) C.GEN Killingholme Limited (company number 06422434); or
- (i) the Hornsea One companies (as defined in Part 12).

Commencement Information

I38 Sch. 12 Pt. 4 para. 2 in force at 7.9.2016, see [art. 1\(2\)](#)

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by Part 3 of the 1991 Act.

Commencement Information

I39 Sch. 12 Pt. 4 para. 3 in force at 7.9.2016, see [art. 1\(2\)](#)

4.—(1) Despite any provision in this Order or anything shown on the land plans the undertaker must not acquire any apparatus other than by agreement.

(2) The undertaker must not in the exercise of the powers in this Order acquire any right over, or occupy or use, all or any part of the electricity sub-station within the land shown numbered plot 510 on the land plans without the consent of the utility undertaker responsible for its operation.

(3) Consent for the purpose of sub-paragraph (2) must not be unreasonably withheld but may be granted subject to reasonable conditions.

Commencement Information

I40 Sch. 12 Pt. 4 para. 4 in force at 7.9.2016, see [art. 1\(2\)](#)

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, the apparatus must not be removed under this Part, and any right of a utility undertaker to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the relevant undertaker requires the removal of any apparatus placed in that land, it must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed; and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the relevant undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the relevant undertaker and for the subsequent maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the relevant undertaker, or the relevant 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, the utility undertaker in question must, on receipt of a written notice to that effect from the relevant undertaker, as soon as reasonably possible use its best

endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the relevant undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the relevant undertaker or in default of agreement settled by arbitration in accordance with article 41.

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 41, and after the grant to the utility undertaker 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 relevant undertaker to be removed under this Part.

(6) Despite anything in sub-paragraph (5), if the relevant undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work to which this subparagraph applies, that work, instead of being executed by the utility undertaker, must be executed by the relevant undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Sub-paragraph (6) applies to any part of any work necessary in connection with the construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land of the relevant undertaker.

(8) Nothing in sub-paragraph (6) authorises the relevant undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Commencement Information

I41 Sch. 12 Pt. 4 para. 5 in force at 7.9.2016, see [art. 1\(2\)](#)

6.—(1) Where, in accordance with this Part, the relevant undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the relevant undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted on such terms and conditions as may be agreed between the relevant undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 41.

(2) In settling those terms and conditions in respect of the alternative apparatus to be constructed, the arbitrator must—

- (a) give effect to all reasonable requirements of the relevant undertaker for ensuring the safety and efficient operation of the electricity generating station and for securing any subsequent alterations or adaptations of the alternative apparatus that may be required to prevent interference with any proposed works of the relevant undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the relevant undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and right enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision

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for the payment of compensation by the relevant undertaker to that utility undertaker as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

Commencement Information

I42 Sch. 12 Pt. 4 para. 6 in force at 7.9.2016, see [art. 1\(2\)](#)

7.—(1) Not less than 28 days before commencing the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the relevant undertaker under that sub-paragraph, the relevant undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) The works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and an officer of the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by the utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the relevant undertaker, reasonably requires the removal of any apparatus and gives written notice to the relevant undertaker of that requirement, paragraphs 5 and 6 apply as if the removal of the apparatus had been required by the relevant undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the relevant undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The relevant undertaker is not required to comply with sub-paragraph (1) in a case of emergency, but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonable practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Commencement Information

I43 Sch. 12 Pt. 4 para. 7 in force at 7.9.2016, see [art. 1\(2\)](#)

8. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed, the relevant undertaker must provide such alternative means of access to such apparatus as will enable the utility undertaker to maintain or use the apparatus no less effectively than was possible before the obstruction.

Commencement Information

I44 Sch. 12 Pt. 4 para. 8 in force at 7.9.2016, see [art. 1\(2\)](#)

9.—(1) Subject to the following provisions of this paragraph, the relevant undertaker must pay to a utility undertaker the reasonable expenses incurred by the utility undertaker in, or in connection

with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus that may be required in consequence of the execution of any works referred to in paragraph 5(2).

(2) The value of any apparatus removed under this Part must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with this Part—

- (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,

and the placing of apparatus of that type or capacity or those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the relevant undertaker or, in default of agreement, is not determined by arbitration in accordance with article 41 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 that apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must 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 a utility undertaker in respect of works by virtue of sub-paragraph (1) must, 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 the utility undertaker 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

I45 Sch. 12 Pt. 4 para. 9 in force at 7.9.2016, see [art. 1\(2\)](#)

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the relevant undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

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(2) Nothing in sub-paragraph (1) imposes any liability on the relevant undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the relevant undertaker reasonable notice of any claim or demand, and no settlement or compromise may be made without the consent of the relevant undertaker, which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Commencement Information

I46 Sch. 12 Pt. 4 para. 10 in force at 7.9.2016, see [art. 1\(2\)](#)

PART 5

Protection for Associated British Ports

1. The provisions of this Part have effect for the protection of A. B. Ports unless otherwise agreed in writing between the undertaker and A. B. Ports

Commencement Information

I47 Sch. 12 Pt. 5 para. 1 in force at 7.9.2016, see [art. 1\(2\)](#)

2. In this Part—

“A. B. Ports” means Associated British Ports;

“accumulation” means any accumulation of silt or other material that constitutes an impediment to navigation;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal (including the removal of the electrical circuits comprised in Work Nos. 6A and 6B); and “construct” and “constructed” must be construed accordingly;

“erosion” means any erosion of the bed or banks of the River Humber or of any jetty or other structure of whatever nature;

“plans” includes sections, descriptions, drawings and specifications;

“relevant undertaker” means—

(a) in relation to specified works that is Project A works or associated development or ancillary works relating to Project A works, Optimus Wind;

(b) in relation to specified works that is Project B works or associated development or ancillary works relating to Project B works, Breesea; and

(c) in relation to specified works that is shared works or associated development or ancillary works relating to shared works, Optimus Wind and Breesea;

“specified works” means so much of Work Nos. 6A and 6B and any associated development or ancillary works as are within A. B. Ports’ jurisdiction.

Commencement Information

I48 Sch. 12 Pt. 5 para. 2 in force at 7.9.2016, see [art. 1\(2\)](#)

3. The undertaker must not under the powers of this Order acquire land or acquire new rights over land held by A. B. Ports for the purpose of its statutory undertaking without the consent of A. B. Ports, which consent must not be unreasonably withheld but may be given subject to reasonable conditions.

Commencement Information

I49 Sch. 12 Pt. 5 para. 3 in force at 7.9.2016, see [art. 1\(2\)](#)

4.—(1) Before commencing the construction of the specified works, the relevant undertaker must furnish to A. B. Ports for its approval, which it must not unreasonably withhold, plans of the specified works showing the general mode of construction, depth and method of trenching and possible cable protection; and the specified works—

- (a) must not be constructed otherwise than in accordance with the plans approved by A. B. Ports; and
- (b) must be executed to the reasonable satisfaction of A. B. Ports.

(2) When submitting plans in respect of the specified works to the Secretary of State pursuant to article 40 (certification of plans, etc.), the relevant undertaker must—

- (a) send a copy of those plans to A. B. Ports; and
- (b) on receipt of approval of plans or of any conditions or restrictions imposed by the Secretary of State, send a copy to A. B. Ports.

(3) If A. B. Ports fails to express its disapproval of any plans within 56 days after they have been furnished to it under sub-paragraph (1), it is deemed to have approved them.

Commencement Information

I50 Sch. 12 Pt. 5 para. 4 in force at 7.9.2016, see [art. 1\(2\)](#)

5. The relevant undertaker must give to A. B. Ports—

- (a) not less than 14 days' written notice of its intention to commence the construction of the specified works; and
- (b) not more than 14 days after completion of the construction, written notice of such completion.

Commencement Information

I51 Sch. 12 Pt. 5 para. 5 in force at 7.9.2016, see [art. 1\(2\)](#)

6. The relevant undertaker must at all reasonable times during construction of the specified works and afterwards allow A. B. Ports, its servants and agents, access to the specified works and all reasonable facilities for inspection of the specified works.

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Commencement Information

I52 Sch. 12 Pt. 5 para. 6 in force at 7.9.2016, see [art. 1\(2\)](#)

7.—(1) After the purpose of any temporary works has been accomplished, the relevant undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from A. B. Ports requiring the relevant undertaker so to do, remove any such temporary works or any materials relating to them that may have been placed below the level of high water by or on behalf of the relevant undertaker.

(2) If the relevant undertaker fails to do so within a reasonable period after receiving such notice, A. B. Ports may remove them and may recover the reasonable costs of doing so from the relevant undertaker.

Commencement Information

I53 Sch. 12 Pt. 5 para. 7 in force at 7.9.2016, see [art. 1\(2\)](#)

8.—(1) If during the construction of the specified works it is agreed, or in the absence of agreement it is proved to the satisfaction of an arbitrator appointed under article 41 (arbitration), that any accumulation or erosion has been caused wholly or partly by the construction of the specified works or exercise of powers under this Order, the relevant undertaker, if so requested by A. B. Ports acting reasonably, must remedy the accumulation or erosion to the extent attributable to the construction or exercise of powers.

(2) If the relevant undertaker refuses or fails to do so, A. B. Ports may itself cause the work to be done and may recover the reasonable cost of doing so from the relevant undertaker.

Commencement Information

I54 Sch. 12 Pt. 5 para. 8 in force at 7.9.2016, see [art. 1\(2\)](#)

9. The relevant undertaker must pay to A. B. Ports the reasonable costs of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of the specified works.

Commencement Information

I55 Sch. 12 Pt. 5 para. 9 in force at 7.9.2016, see [art. 1\(2\)](#)

10.—(1) Without limiting the other provisions of this Part, the relevant undertaker must indemnify A. B. Ports in respect of all losses, costs, charges, damages and expenses however caused (including a reasonable and proper proportion of the overhead charges of A. B. Ports) that may reasonably be incurred by or occasioned to A. B. Ports by reason of or arising from or in connection with—

- (a) the perusal of plans and the inspection of the specified works by A. B. Ports or its duly authorised representative;
- (b) the construction or failure of the specified works or the undertaking by A. B. Ports of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of A. B. Ports arising from such construction or failure; or

(c) any act or omission of the relevant undertaker or its servants or agents whilst engaged in the construction of any of the specified works.

(2) Without limiting sub-paragraph (1), the relevant undertaker must indemnify A. B. Ports in respect of all claims and demands arising out of, or in connection with, such construction, or failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph imposes any liability on the relevant undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) or (2) are attributable to negligence on the part of A. B. Ports or of any person in its employ or of its contractors or agents.

(4) A. B. Ports must give to the relevant undertaker notice in writing of any claim or demand for which the relevant undertaker may be liable under this paragraph, and no settlement or compromise of any such claim or demand may be made without the consent in writing of the relevant undertaker.

Commencement Information

I56 Sch. 12 Pt. 5 para. 10 in force at 7.9.2016, see [art. 1\(2\)](#)

11. The fact that any work or thing has been executed or done with the consent of A. B. Ports and in accordance with any conditions or restrictions prescribed by A. B. Ports or in accordance with any plans approved or deemed to be approved by A. B. Ports or to its satisfaction or in accordance with any directions or award of any arbitrator or in accordance with any plans approved by the Secretary of State and any conditions or restrictions imposed by the Secretary of State does not relieve the relevant undertaker from any liability under this Part.

Commencement Information

I57 Sch. 12 Pt. 5 para. 11 in force at 7.9.2016, see [art. 1\(2\)](#)

12. With the exception of any duty owed by A. B. Ports to the relevant undertaker expressly provided for in this Part, nothing in this Order must be construed as imposing on A. B. Ports, either directly or indirectly, any form of duty or liability to which A. B. Ports would not otherwise be subject which is enforceable by proceedings before any court.

Commencement Information

I58 Sch. 12 Pt. 5 para. 12 in force at 7.9.2016, see [art. 1\(2\)](#)

13. Nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, A. B. Ports at the commencement of this Order or any title of A. B. Ports in, to or over any lands or foreshore held or acquired by it.

Commencement Information

I59 Sch. 12 Pt. 5 para. 13 in force at 7.9.2016, see [art. 1\(2\)](#)

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PART 6

Protection for Anglian Water Services Limited

1. The provisions of this Part have effect for the protection of Anglian Water unless otherwise agreed in writing between the undertaker and Anglian Water.

Commencement Information

I60 Sch. 12 Pt. 6 para. 1 in force at 7.9.2016, see [art. 1\(2\)](#)

2. In this Part—

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfill its statutory functions in no less efficient a manner than previously;

“Anglian Water” means Anglian Water Services Limited (company number 02366656);

“apparatus” means—

(a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;

(b) any drain or works vested in Anglian Water under the Water Industry Act 1991; and

(c) any sewer that is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or on land;

“plan” includes section, drawing, specification and method statement;

“relevant undertaker” means—

(a) in relation to works that are Project A works or associated development or ancillary works relating to Project A works, Optimus Wind;

(b) in relation to works that are Project B works or associated development or ancillary works relating to Project B works, Breesea; and

(c) in relation to works that are shared works or associated development or ancillary works relating to shared works, Optimus Wind and Breesea.

Commencement Information

I61 Sch. 12 Pt. 6 para. 2 in force at 7.9.2016, see [art. 1\(2\)](#)

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 of the 1991 Act.

Commencement Information

I62 Sch. 12 Pt. 6 para. 3 in force at 7.9.2016, see [art. 1\(2\)](#)

4.—(1) The relevant undertaker must not—

- (a) execute any works that interfere with, build over or are near to any apparatus within the Order land;
- (b) execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus; or
- (c) where the apparatus is laid in a trench, execute any filling around the apparatus within the standard protection strips, which are the strips of land falling the following distances to either side of the medial line of any apparatus—
 - (i) 2.25 metres, where the diameter of the pipe is less than 150 millimetres;
 - (ii) 3 metres, where the diameter of the pipe is 150 millimetres or more but less than 450 millimetres;
 - (iii) 4.5 metres, where the diameter of the pipe is 450 millimetres or more but less than 750 millimetres; and
 - (iv) 6 metres, where the diameter of the pipe is 750 millimetres or more,

unless the relevant undertaker has submitted to Anglian Water, not less than 28 days before starting the execution of any works, a plan and description of the works to be executed.

(2) The works must be executed only in accordance with the plan and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and an officer of Anglian Water is entitled to watch and inspect the execution of the works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan and description under sub-paragraph (1) are submitted to it.

(4) Nothing in this paragraph precludes the relevant undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan and description instead of the plan and description previously submitted, and once the relevant undertaker has done so the provisions of this paragraph apply to and in respect of the new plan and description.

(5) The relevant undertaker is not required to comply with sub-paragraph (1) in a case of emergency, but in that case it must give to Anglian Water notice as soon as is reasonably practicable and a plan and description of the works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(6) It is reasonable for Anglian Water to require that the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or the filling around the apparatus (where the apparatus is laid in a trench) be executed by Anglian Water.

(7) Anglian Water must execute any requirement made under sub-paragraph (6) in a timely manner.

Commencement Information

I63 Sch. 12 Pt. 6 para. 4 in force at 7.9.2016, see [art. 1\(2\)](#)

5. The alteration, extension, removal or relocation of any apparatus must not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2010 or other legislation and any other associated consents are obtained, and

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any approval or agreement required from Anglian Water on alternative outfall locations as a result of such relocation are obtained, such approvals or agreements from Anglian Water not to be unreasonably withheld or delayed; and

- (b) the relevant undertaker has given to Anglian Water written notice of its requirement to alter, extend, remove or relocate apparatus together with a plan and description of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed, and such works to be executed only in accordance with the plan and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

Commencement Information

I64 Sch. 12 Pt. 6 para. 5 in force at 7.9.2016, see [art. 1\(2\)](#)

6. If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the relevant undertaker, Anglian Water must, on receipt of a written notice to that effect from the relevant undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

Commencement Information

I65 Sch. 12 Pt. 6 para. 6 in force at 7.9.2016, see [art. 1\(2\)](#)

7. Any alternative apparatus to be constructed in land of the relevant undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the relevant undertaker or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

Commencement Information

I66 Sch. 12 Pt. 6 para. 7 in force at 7.9.2016, see [art. 1\(2\)](#)

- 8.—(1) Where, in exercise of the powers conferred by this Order,—
- (a) the relevant undertaker acquires any interest in any land in which apparatus is placed; and
- (b) the apparatus is to be relocated, extended, removed or altered in any way,

no alteration or extension may take place until Anglian Water has established, to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

(2) Anglian Water must use reasonable endeavours to establish contingency arrangements in a timely manner.

Commencement Information

I67 Sch. 12 Pt. 6 para. 8 in force at 7.9.2016, see [art. 1\(2\)](#)

9. Despite any provision in this Order or anything shown on any plan, the relevant undertaker must not acquire any apparatus otherwise than by agreement; and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land,

the relevant undertaker must, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 41.

Commencement Information

I68 Sch. 12 Pt. 6 para. 9 in force at 7.9.2016, see [art. 1\(2\)](#)

10. If, in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed, the relevant undertaker must provide such alternative means of access to the apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before the obstruction.

Commencement Information

I69 Sch. 12 Pt. 6 para. 10 in force at 7.9.2016, see [art. 1\(2\)](#)

11. If, in consequence of the exercise of the powers conferred by this Order, previously unmapped sewers, lateral drains or other apparatus are identified by the relevant undertaker, notification of the location of such assets must be given to Anglian Water as soon as reasonably practicable and, if identified by Anglian Water as being within its responsibility, must be afforded the same protection as other Anglian Water assets.

Commencement Information

I70 Sch. 12 Pt. 6 para. 11 in force at 7.9.2016, see [art. 1\(2\)](#)

12. If, for any reason or in consequence of the construction of any of the works referred to in paragraphs 4 to 9 and 11, any damage is caused to any apparatus (other than apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the relevant undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs properly and reasonably incurred by Anglian Water,

by reason or in consequence of the damage or interruption.

Commencement Information

I71 Sch. 12 Pt. 6 para. 12 in force at 7.9.2016, see [art. 1\(2\)](#)

13. The relevant undertaker must pay to Anglian Water the reasonable expenses incurred by Anglian Water in executing the works reasonably required under paragraph 4(6) and paragraph 5 and in complying with a written notice under paragraph 6.

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Commencement Information

I72 Sch. 12 Pt. 6 para. 13 in force at 7.9.2016, see [art. 1\(2\)](#)

14. Nothing in paragraph 12 imposes any liability on the relevant undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Anglian Water, its officer, servants, contractors or agents.

Commencement Information

I73 Sch. 12 Pt. 6 para. 14 in force at 7.9.2016, see [art. 1\(2\)](#)

15. Any difference or dispute arising between the undertaker and Anglian Water under this Part must, unless otherwise agreed in writing between the undertaker and Anglian Water, be determined by arbitration in accordance with article 41.

Commencement Information

I74 Sch. 12 Pt. 6 para. 15 in force at 7.9.2016, see [art. 1\(2\)](#)

PART 7

Protection for Centrica plc

1. The provisions of this Part have effect for the protection of Centrica unless otherwise agreed in writing between the undertaker and Centrica.

Commencement Information

I75 Sch. 12 Pt. 7 para. 1 in force at 7.9.2016, see [art. 1\(2\)](#)

2. In this Part—

“access road” means the road providing access to Centrica’s power station from Chase Hill Road;

“apparatus” means Centrica’s pipelines, cables, structures, or other electrical, gas or telecommunication infrastructure owned, occupied or maintained by Centrica for the purposes of its undertaking;

“Centrica” means Centrica plc (company number 03033654) and all of its subsidiaries and group companies including but not limited to Centrica KPS Limited (company number 05006144), Centrica Storage Limited (company number 03294124) and Centrica Energy Limited (company number 02877398) or any successor company in title and function;

“relevant undertaker” means—

- (a) in relation to works which are Project A works or associated development or ancillary works relating to Project A works, Optimus Wind;
- (b) in relation to works which are Project B works or associated development or ancillary works relating to Project B works, Breesea; and
- (c) in relation to works which are shared works or associated development or ancillary works relating to shared works, Optimus Wind and Breesea.

Commencement Information

I76 Sch. 12 Pt. 7 para. 2 in force at 7.9.2016, see [art. 1\(2\)](#)

3. Before extinguishing any existing rights for Centrica to place, install, keep, inspect, renew and maintain its apparatus on, over or in the Order land or to cross the Order land to access its apparatus, the relevant undertaker, with the agreement of Centrica, must create a new right, which is consistent with the existing right being extinguished, to place, install, keep, inspect, renew and maintain the apparatus in the same location or a new right of access that is reasonably convenient for Centrica, such agreement not to be unreasonably withheld or delayed.

Commencement Information

I77 Sch. 12 Pt. 7 para. 3 in force at 7.9.2016, see [art. 1\(2\)](#)

4.—(1) Except where paragraph 5 applies, no works may commence within 10 metres of apparatus or on, to or within 10 metres in any direction of the access road until a construction method statement to protect the apparatus or the access road as the case may be has been prepared by the relevant undertaker and submitted to and agreed with Centrica (provided that Centrica must not unreasonably withhold or delay such agreement).

(2) The construction method statement must include provisions in respect of—

- (a) the location and methods of reinforcement of crossing points over the apparatus and restrictions on building and altering the ground level over the apparatus elsewhere;
- (b) a mechanism for the enforcement of the relevant undertaker's use of designated crossing points over the apparatus and the agreed reinforcement methods; and
- (c) adoption of a prior notification and consent regime which would require the relevant undertaker to—
 - (i) seek Centrica's consent to the carrying out of the proposed development within the vicinity of the apparatus or on or to the access road, such consent not to be unreasonably withheld, and comply with any reasonable conditions attached by Centrica to its consent; and
 - (ii) notify Centrica of its intention to carry out any development within the vicinity of the apparatus or on or to the access road, such notification to be provided at least 48 hours before any such development occurs; and

the authorised development must be carried out in accordance with the approved construction method statement.

Commencement Information

I78 Sch. 12 Pt. 7 para. 4 in force at 7.9.2016, see [art. 1\(2\)](#)

5.—(1) If the relevant undertaker acquires or overrides any interest in any land in which apparatus is laid, the apparatus must not be removed under this Part and any right of Centrica to maintain the apparatus in that land must not be extinguished until alternative apparatus has been constructed at the relevant undertaker's expense and is in operation to the reasonable satisfaction of Centrica in accordance with sub-paragraphs (2) to (5).

(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 relevant undertaker requires the removal of apparatus in

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that land, it must give to Centrica 56 days' 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, Centrica reasonably needs to remove the apparatus) the relevant undertaker must, subject to sub-paragraph (3), afford to Centrica to its satisfaction (taking into account paragraph 6(1)) the necessary facilities and rights for—

- (a) the construction of an alternative apparatus in other land of the relevant undertaker or Centrica; and
- (b) subsequently 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 the relevant undertaker or Centrica, or the relevant 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, Centrica must, on receipt of a written notice to that effect from the relevant undertaker, 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, except that this obligation does not extend to the requirement for Centrica to seek compulsory purchase powers to this end unless it elects to so do.

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

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

Commencement Information

I79 Sch. 12 Pt. 7 para. 5 in force at 7.9.2016, see [art. 1\(2\)](#)

6.—(1) Where, in accordance with this Part, the relevant undertaker affords to Centrica facilities and rights for the construction and maintenance in land of the relevant undertaker of alternative apparatus in substitution for the apparatus to be removed, those facilities and rights must be granted on such terms and conditions as may be agreed between the relevant undertaker and Centrica and must be no less favourable on the whole to Centrica than the facilities and rights enjoyed by it in respect of the apparatus to be removed, unless agreed otherwise by Centrica.

(2) If the facilities and rights to be afforded by the relevant undertaker and agreed with Centrica under sub-paragraph (1) in respect of any alternative apparatus, or the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Centrica than the facilities and rights enjoyed by it in respect of the apparatus to be removed or the terms and conditions to which those facilities and rights are subject, the matter must be referred to arbitration, and the arbitrator must make such provision for the payment of compensation by the relevant undertaker to Centrica as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Commencement Information

I80 Sch. 12 Pt. 7 para. 6 in force at 7.9.2016, see [art. 1\(2\)](#)

7. If for any reason or in consequence of the construction or operation of the authorised development any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Centrica or to the access road, the relevant undertaker must bear and pay the cost reasonably incurred by Centrica in making good any damage by reason or in consequence of any such damage, provided that the maximum liability of the relevant undertaker or the maximum liability of the relevant undertakers (in aggregate) is limited to £50,000,000 per claim or series of claims arising from 1 event.

Commencement Information

I81 Sch. 12 Pt. 7 para. 7 in force at 7.9.2016, see [art. 1\(2\)](#)

8. The relevant undertaker must use its best endeavours to co-ordinate the execution and operation 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 Centrica's undertaking, and Centrica must use its best endeavours to co-operate with the relevant undertaker for that purpose.

Commencement Information

I82 Sch. 12 Pt. 7 para. 8 in force at 7.9.2016, see [art. 1\(2\)](#)

9. Despite any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any apparatus, override any easement or other interest of Centrica, acquire any land or other interest of Centrica or create any new rights over any land or other interest of Centrica otherwise than by agreement of Centrica, which agreement must not be unreasonably withheld.

Commencement Information

I83 Sch. 12 Pt. 7 para. 9 in force at 7.9.2016, see [art. 1\(2\)](#)

10. Any dispute arising between the undertaker and Centrica under this Part must be determined by arbitration as provided in article 41 (arbitration).

Commencement Information

I84 Sch. 12 Pt. 7 para. 10 in force at 7.9.2016, see [art. 1\(2\)](#)

PART 8

Protection for VPI Immingham LLP

1. The provisions of this Part have effect for the protection of VPI unless otherwise agreed in writing between the undertaker and VPI.

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Commencement Information

I85 Sch. 12 Pt. 8 para. 1 in force at 7.9.2016, see [art. 1\(2\)](#)

2. In this Part—

“pipeline” means the gas pipeline crossing the Order land owned and operated by VPI used at various times for the passage of gas and all ancillary apparatus including such works and apparatus properly appurtenant to the pipeline as are specified by section 65(2) of the Pipelines Act 1962⁽¹⁴⁾;

“relevant undertaker” means—

- (a) in relation to works which are Project A works or associated development or ancillary works relating to Project A works, Optimus Wind;
- (b) in relation to works which are Project B works or associated development or ancillary works relating to Project B works, Breesea; and
- (c) in relation to works which are shared works or associated development or ancillary works relating to shared works, Optimus Wind and Breesea;

“VPI” means VPI Immingham LLP (registered number OC300980).

Commencement Information

I86 Sch. 12 Pt. 8 para. 2 in force at 7.9.2016, see [art. 1\(2\)](#)

3. Before commencing any part of the authorised development or the operation of the authorised development that would have an effect on the operation and maintenance of the pipeline and access to it, the relevant undertaker must submit to VPI plans and sections of the proposed works and such further particulars as VPI may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

Commencement Information

I87 Sch. 12 Pt. 8 para. 3 in force at 7.9.2016, see [art. 1\(2\)](#)

4. No works comprising any part of the authorised development or the operation of the authorised development that would have an effect in full or in part on the operation, maintenance, repair, replacement and abandonment of the pipeline and access to it may be commenced until plans and sections in respect of the works submitted under paragraph 3 have been approved by VPI.

Commencement Information

I88 Sch. 12 Pt. 8 para. 4 in force at 7.9.2016, see [art. 1\(2\)](#)

5. Any approval of VPI required under paragraph 4 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as VPI may require to be made for—

- (a) the continuing safety and operational viability of the pipeline; and
- (b) the requirement for VPI to have uninterrupted and unimpeded access to the pipeline at all times.

⁽¹⁴⁾ 1962 c.58. Section 65(2) was amended by paragraph 6 of Schedule 2 to the Energy Act 2011 (c.16) and S.I. 2000/1937 and 2011/2305.

Commencement Information

I89 Sch. 12 Pt. 8 para. 5 in force at 7.9.2016, see [art. 1\(2\)](#)

6.—(1) Subject to sub-paragraphs (2) and (3), if, by reason or in consequence of the construction of any of the works referred to in paragraph 3, any damage is caused to any apparatus or property of VPI, or there is any interruption in any service provided, or in the supply of any goods, by VPI, the relevant undertaker must—

- (a) bear and pay the cost reasonably incurred by VPI in making good such damage or restoring the supply; and
- (b) make reasonable compensation to VPI for any other expenses, loss, damages, penalty or costs incurred by VPI,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the relevant undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of VPI, its officers, servants, contractors or agents.

(3) VPI must give the relevant undertaker reasonable notice of any claim or demand, and no settlement or compromise may be made without the consent of the relevant undertaker, which, if it withholds consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Commencement Information

I90 Sch. 12 Pt. 8 para. 6 in force at 7.9.2016, see [art. 1\(2\)](#)

7. Any dispute arising between the undertaker and VPI under this Part must be determined by arbitration as provided in article 41 (arbitration).

Commencement Information

I91 Sch. 12 Pt. 8 para. 7 in force at 7.9.2016, see [art. 1\(2\)](#)

PART 9

Protection for Phillips 66 Limited

1. The provisions of this Part have effect for the protection of P66 unless otherwise agreed in writing between the undertaker and P66.

Commencement Information

I92 Sch. 12 Pt. 9 para. 1 in force at 7.9.2016, see [art. 1\(2\)](#)

2. In this Part—

“P66” means Phillips 66 Limited (company number 529086);

“pipeline” means the crude oil pipeline owned and operated by P66 used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such

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works and apparatus properly appurtenant to the pipeline as are specified by section 65(2) of the Pipe-lines Act 1962;

“relevant undertaker” means—

- (a) in relation to works which are Project A works or associated development or ancillary works relating to Project A works, Optimus Wind;
- (b) in relation to works which are Project B works or associated development or ancillary works relating to Project B works, Breesea; and
- (c) in relation to works which are shared works or associated development or ancillary works relating to shared works, Optimus Wind and Breesea.

Commencement Information

I93 Sch. 12 Pt. 9 para. 2 in force at 7.9.2016, see [art. 1\(2\)](#)

3. Before commencing any part of the authorised development or the operation of the authorised development that would have an effect on the operation and maintenance of the pipeline and access to it, the relevant undertaker must submit to P66 plans and sections of the proposed works and such further particulars as P66 may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

Commencement Information

I94 Sch. 12 Pt. 9 para. 3 in force at 7.9.2016, see [art. 1\(2\)](#)

4. No works comprising any part of the authorised development or the operation of the authorised development that would have an effect in full or in part on the operation, maintenance, repair, replacement and abandonment of the pipeline and access to it may be commenced until plans and sections in respect of the works submitted under paragraph 3 have been approved by P66.

Commencement Information

I95 Sch. 12 Pt. 9 para. 4 in force at 7.9.2016, see [art. 1\(2\)](#)

5. Any approval of P66 required under paragraph 4 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as P66 may require to be made for—

- (a) the continuing safety and operational viability of the pipeline; and
- (b) the requirement for P66 to have uninterrupted and unimpeded access to the pipeline at all times.

Commencement Information

I96 Sch. 12 Pt. 9 para. 5 in force at 7.9.2016, see [art. 1\(2\)](#)

6.—(1) Subject to sub-paragraphs (2) and (3), if, by reason or in consequence of the construction of any of the works referred to in paragraph 3, any damage is caused to any apparatus or property of P66, or there is any interruption in any service provided, or in the supply of any goods, by P66, the relevant undertaker must—

- (a) bear and pay the cost reasonably incurred by P66 in making good such damage or restoring the supply; and

- (b) make reasonable compensation to P66 for any other expenses, loss, damages, penalty or costs incurred by P66,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the relevant undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of P66, its officers, servants, contractors or agents.

(3) P66 must give the relevant undertaker reasonable notice of any claim or demand, and no settlement or compromise may be made without the consent of the relevant undertaker, which, if it withholds consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Commencement Information

I97 Sch. 12 Pt. 9 para. 6 in force at 7.9.2016, see [art. 1\(2\)](#)

7. Any dispute arising between the undertaker and P66 under this Part must be determined by arbitration as provided in article 41(arbitration).

Commencement Information

I98 Sch. 12 Pt. 9 para. 7 in force at 7.9.2016, see [art. 1\(2\)](#)

PART 10

Protection for ConocoPhillips (U.K.) Limited

1. The provisions of this Part have effect for the protection of ConocoPhillips unless otherwise agreed in writing between the undertaker and ConocoPhillips.

Commencement Information

I99 Sch. 12 Pt. 10 para. 1 in force at 7.9.2016, see [art. 1\(2\)](#)

2. In this Part—

“ConocoPhillips” means ConocoPhillips (U.K.) Limited (company number 00524868);

“pipeline” means the condensate pipeline running from the ConocoPhillips Theddlethorpe Gas Terminal to the Humber Oil Refinery, operated by ConocoPhillips on behalf of the pipeline owners and all ancillary apparatus including such works and apparatus properly appurtenant to the pipeline as are specified by section 65(2) of the Pipe-lines Act 1962;

“relevant undertaker” means—

- (a) in relation to works which are Project A works or associated development or ancillary works relating to Project A works, Optimus Wind;
- (b) in relation to works which are Project B works or associated development or ancillary works relating to Project B works, Breesea; and
- (c) in relation to works which are shared works or associated development or ancillary works relating to shared works, Optimus Wind and Breesea.

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Commencement Information

I100 Sch. 12 Pt. 10 para. 2 in force at 7.9.2016, see [art. 1\(2\)](#)

3. Not less than 28 days before commencing any part of the authorised development or the operation of the authorised development that is near to and would or may have an effect on the operation and maintenance of the pipeline and access to it, the relevant undertaker must submit to ConocoPhillips plans and sections of the proposed works and such further particulars as ConocoPhillips may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

Commencement Information

I101 Sch. 12 Pt. 10 para. 3 in force at 7.9.2016, see [art. 1\(2\)](#)

4. No works comprising any part of the authorised development or the operation of the authorised undertaking which would have an effect in full or in part on the operation, maintenance, repair, replacement and abandonment of the pipeline and access to it may be commenced until plans and sections in respect of the works submitted under paragraph 3 have been approved by ConocoPhillips.

Commencement Information

I102 Sch. 12 Pt. 10 para. 4 in force at 7.9.2016, see [art. 1\(2\)](#)

5. Any approval of ConocoPhillips required under paragraph 4 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as ConocoPhillips may require to be made for—

- (a) the continuing safety and operational viability of the pipeline; and
- (b) the requirement for ConocoPhillips to have uninterrupted and unimpeded access to the pipeline at all times.

Commencement Information

I103 Sch. 12 Pt. 10 para. 5 in force at 7.9.2016, see [art. 1\(2\)](#)

6.—(1) Subject to sub-paragraphs (2) and (3), if, by reason or in consequence of the construction of any of the works referred to in paragraph 3, any damage is caused to any apparatus or property of ConocoPhillips, or there is any interruption in any service provided, or in the supply of any goods, by ConocoPhillips, the relevant undertaker must—

- (a) bear and pay the cost reasonably incurred by ConocoPhillips in making good such damage or restoring the supply; and
- (b) make reasonable compensation to ConocoPhillips for any other expenses, loss, damages, penalty or costs incurred by ConocoPhillips,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the relevant undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of ConocoPhillips, its officers, servants, contractors or agents.

(3) ConocoPhillips must give the relevant undertaker reasonable notice of any claim or demand, and no settlement or compromise may be made without the consent of the relevant undertaker, which, if it withholds consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Commencement Information

I104 Sch. 12 Pt. 10 para. 6 in force at 7.9.2016, see [art. 1\(2\)](#)

7. Any dispute arising between the undertaker and ConocoPhillips under this Part must be determined by arbitration as provided in article 41 (arbitration).

Commencement Information

I105 Sch. 12 Pt. 10 para. 7 in force at 7.9.2016, see [art. 1\(2\)](#)

PART 11

Protection for C.GEN Killingholme Limited

1. The provisions of this Part apply to govern the relationship between the undertaker and C.GEN unless otherwise agreed in writing between the undertaker and C.GEN.

Commencement Information

I106 Sch. 12 Pt. 11 para. 1 in force at 7.9.2016, see [art. 1\(2\)](#)

2. In this Part—

“approving party” means the party from whom an approval should be, has been or should have been obtained under this Part, being—

(a) in the case of specified works by C.GEN, Optimus Wind and Breesea, to the extent that they continue to have powers under this Order in respect of any part of the Order land shown numbered 503, 505, 506, 507 or 509 on the land plans, and any party who has powers under this Order in respect of that Order land by virtue of article 35 (transfer of benefit of Order); and

(b) in the case of specified works by the undertaker, C.GEN;

“C.GEN” means C.GEN Killingholme Limited (company number 06422434);

“C.GEN relevant land” means the area of land shown coloured yellow on the Plan;

“construction” includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and “construct” and “constructed” must be construed accordingly;

“crossing zones” means those areas of land shown coloured green on the Plan;

“dominant land” means the Order land shown numbered 500 and 506 on the land plans;

“drainage ditch” means the ditch shown by a black line marked “Drain” on the Plan;

“grid connection land” means the C.GEN relevant land, the thermal buffer zone and the crossing zones;

“Hornsea Project Substation Site” means the site shown outlined in pink on the Plan;

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“Plan” means the plan certified as the C.GEN protective provisions plan by the Secretary of State under article 40 (certification of plans, etc.);

“plans” includes sections, drawings, specifications, designs, design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the grid connection land;

“promoting party” means the party who is seeking, has sought or should have sought an approval under this Part, being—

- (a) the undertaker, in the case of specified works by the undertaker; and
- (b) C.GEN, in the case of specified works by C.GEN;

“servient land” means any pond, ponds or any watercourse on land under the ownership of C.GEN as at the date of this Order;

“specified works” means so much of any works or operations by the undertaker or C.GEN as is in, on, under or over the grid connection land;

“thermal buffer zone” means the area of land shown coloured red on the Plan.

Commencement Information

I107 Sch. 12 Pt. 11 para. 2 in force at 7.9.2016, see [art. 1\(2\)](#)

3. The undertaker must not under the powers of this Order acquire—

- (a) new rights over the C.GEN relevant land; or
- (b) new rights over the thermal buffer zone, except for the purposes of access and maintenance; or
- (c) new rights over crossing zones,

without the consent of C.GEN, such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions.

Commencement Information

I108 Sch. 12 Pt. 11 para. 3 in force at 7.9.2016, see [art. 1\(2\)](#)

4.—(1) The promoting party must give to the approving party not less than 28 days’ written notice of its intention to commence the construction of any specified works and at the same time must submit plans for the specified works to the approving party.

(2) Not more than 14 days after completion of the construction of the specified works, the promoting party must give the approving party written notice of such completion.

Commencement Information

I109 Sch. 12 Pt. 11 para. 4 in force at 7.9.2016, see [art. 1\(2\)](#)

5.—(1) Following receipt of the notification of the intention to commence the construction of the specified works under paragraph 4(1), the approving party must within 14 days give notice in writing to the promoting party that (acting reasonably)—

- (a) it approves the plans; or

(b) it does not approve the plans and provide reasons for this.

(2) Where the approving party confirms that it does not approve the plans for the specified works, then both parties must, acting reasonably, enter into negotiations to seek to agree the plans.

(3) If following the expiry of 14 days from the date of notification under sub-paragraph (1)(b) no agreement has been reached, the matter must be determined in accordance with paragraph 22.

Commencement Information

I110 Sch. 12 Pt. 11 para. 5 in force at 7.9.2016, see [art. 1\(2\)](#)

6.—(1) Any specified works must be constructed—

(a) without unreasonable delay in accordance with the plans approved or settled under this Part; and

(b) to the reasonable satisfaction of the approving party.

(2) If any part of the specified works is constructed otherwise than in accordance with the requirements of this Part, the approving party may by notice in writing require the promoting party at the promoting party's own expense to comply with the requirements of this Part or (if the promoting party so elects and the approving party in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the works and, where removal is required, to restore the site to its former condition to such extent and within such limits as the approving party reasonably requires.

(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (2) is served on the promoting party, the promoting party has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the approving party may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the promoting party.

(4) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any works in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the approving party must not except in an emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

Commencement Information

I111 Sch. 12 Pt. 11 para. 6 in force at 7.9.2016, see [art. 1\(2\)](#)

7. The promoting party must at all reasonable times during construction of the specified works and thereafter allow the approving party, its servants and agents, access to the works and all reasonable facilities for inspection of the works.

Commencement Information

I112 Sch. 12 Pt. 11 para. 7 in force at 7.9.2016, see [art. 1\(2\)](#)

8.—(1) After the purpose of any temporary works has been accomplished, the promoting party must with all reasonable dispatch, or after a reasonable period of notice in writing from the approving party requiring the promoting party to do so, remove the temporary works or any materials relating

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to them which may have been placed in, on, under or over the grid connection land by or on behalf of the promoting party.

(2) If the promoting party fails to do so within a reasonable period after receiving notice under sub-paragraph (1), the approving party may remove them and may recover the reasonable costs of doing so from the promoting party.

Commencement Information

I113 Sch. 12 Pt. 11 para. 8 in force at 7.9.2016, see [art. 1\(2\)](#)

9.—(1) If any damage to the grid connection land or any apparatus of any approving party on the grid connection land or any interference or obstruction is caused by the carrying out of, or in consequence of the construction of specified works, the promoting party must, notwithstanding any approval, make good the damage to the reasonable satisfaction of the approving party and must pay to the approving party all reasonable expenses to which the approving party may be put and compensation for any loss which it may sustain by reason of the damage, interference or obstruction in accordance with paragraph 10.

(2) If the promoting party refuses or fails to do so, the approving party may cause the work to be done and may recover the reasonable cost of doing so from the promoting party.

Commencement Information

I114 Sch. 12 Pt. 11 para. 9 in force at 7.9.2016, see [art. 1\(2\)](#)

10.—(1) Without limiting the other provisions of this Part, the promoting party is responsible for, and must make good to the approving party, all losses, costs, charges, damages and expenses however caused (including a reasonable and proper proportion of the overhead charges of the approving party) that may reasonably be incurred by or occasioned to the approving party by reason of or arising from or in connection with—

- (a) the perusal of plans and the inspection of the specified works by the approving party or its duly authorised representative;
- (b) the construction or failure of the specified works, or the undertaking by the approving party of works or measures to prevent or remedy damage to any property of the approving party arising from such construction or failure;
- (c) any act or omission of the promoting party or its servants or agents whilst engaged in the construction of any of the specified works.

(2) The approving party must give to the promoting party notice in writing of any claim or demand for which the promoting party may be liable under this paragraph, and no settlement or compromise of any such claim or demand may be made without the consent in writing of the promoting party.

(3) Nothing in this paragraph imposes any liability on the promoting party to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) are attributable to negligence on the part of the approving party or of any person in its employ or of its contractors or agents.

Commencement Information

I115 Sch. 12 Pt. 11 para. 10 in force at 7.9.2016, see [art. 1\(2\)](#)

11. The fact that any work or thing has been executed or done with the consent of the approving party and in accordance with any conditions or restrictions prescribed by the approving party or in accordance with any plans approved by the approving party or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the promoting party from any liability under this Part.

Commencement Information

I116 Sch. 12 Pt. 11 para. 11 in force at 7.9.2016, see [art. 1\(2\)](#)

12. Any consent or approval of an approving party required under this Part—

- (a) must not be unreasonably withheld or delayed; and
- (b) may be given subject to reasonable conditions.

Commencement Information

I117 Sch. 12 Pt. 11 para. 12 in force at 7.9.2016, see [art. 1\(2\)](#)

13. Any consent or approval of an approving party required under this Part is deemed to have been given if it is neither given nor refused within 28 days beginning with the date on which the application for consent or approval was submitted to the approving party.

Commencement Information

I118 Sch. 12 Pt. 11 para. 13 in force at 7.9.2016, see [art. 1\(2\)](#)

14. Without limiting paragraph 12, it is not be reasonable for an approving party to withhold or delay any consent or approval under this Part in relation to specified works in, on, under, or over the grid connection land solely on the basis of thermal interaction between the circuit and any adjacent circuit, whether existing or proposed, where it has been demonstrated that there will be no material thermal interaction, which is deemed to have been demonstrated where the separation between the circuits is 6 metres or more (from the centre line of each circuit).

Commencement Information

I119 Sch. 12 Pt. 11 para. 14 in force at 7.9.2016, see [art. 1\(2\)](#)

15. Without limiting paragraph 12, and in addition to the circumstances described in paragraph 14, it is not reasonable for the approving party to withhold or delay any consent or approval under this Part in relation to specified works in, on, under, or over the crossing zones solely on the basis of thermal interaction where the plans of the specified works submitted under paragraph 4 demonstrate that all reasonable steps have been taken to minimise thermal interaction between the circuit and any other circuit, whether existing or proposed.

Commencement Information

I120 Sch. 12 Pt. 11 para. 15 in force at 7.9.2016, see [art. 1\(2\)](#)

16. With the exception of any duty owed by the approving party to the promoting party expressly provided for in the foregoing provisions of this Part, nothing in this Order must be construed as

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imposing on the approving party, either directly or indirectly, any form of duty or liability to which the approving party would not otherwise be subject which is enforceable by proceedings before any court.

Commencement Information

I121 Sch. 12 Pt. 11 para. 16 in force at 7.9.2016, see [art. 1\(2\)](#)

17. Except as this Part provides, nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, the approving party at the commencement of this Order or any title of the approving party in, to or over any lands held or acquired by it.

Commencement Information

I122 Sch. 12 Pt. 11 para. 17 in force at 7.9.2016, see [art. 1\(2\)](#)

18. In the event that the promoting party requires to alter the course of, modify, or remove any part of the drainage ditch the alteration, modification or removal works must be approved in writing by the approving party before the works are carried out, and such approval may not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

Commencement Information

I123 Sch. 12 Pt. 11 para. 18 in force at 7.9.2016, see [art. 1\(2\)](#)

19. The undertaker must ensure that the rate or volume of water discharged from the dominant land onto, over, across or through the servient land will not result in a significant increase in the exercise of the rights of the easement enjoyed by the dominant land on, over, across and through the servient land other than with the prior written approval of C.GEN.

Commencement Information

I124 Sch. 12 Pt. 11 para. 19 in force at 7.9.2016, see [art. 1\(2\)](#)

20. The undertaker must not exercise the powers conferred by article 18 (compulsory acquisition of land) or article 19 (compulsory acquisition of rights) in respect of the Order land shown numbered 510 on the land plans to extinguish any rights that C.GEN has to connect into the North Killingholme National Grid substation.

Commencement Information

I125 Sch. 12 Pt. 11 para. 20 in force at 7.9.2016, see [art. 1\(2\)](#)

21. The provisions of this Part enure for the benefit of the undertaker, C.GEN and any statutory successor of either that is licensed under section 6 of the 1989 Act and is in occupation or use of the Hornsea Project Substation Site, the grid connection land or any part of it pursuant to its undertaking.

Commencement Information

I126 Sch. 12 para. 21 in force at 7.9.2016, see [art. 1\(2\)](#)

22. Any dispute or difference arising between Optimus Wind, Breesea or any other party having powers under this Order in respect of the Order land shown numbered 503, 505, 506, 507 or 509 on the land plans by virtue of article 35 (transfer of benefit of Order) on the one hand (the “undertaker”) and C.GEN on the other as to their respective rights, duties and obligations under this Part or as to any matters arising out of it or in connection with the subject matter of this Part must be determined by a single arbitrator whose appointment is to be agreed on between the undertaker and C.GEN or, where agreement cannot be reached within 14 days, who is to be appointed on the application of either party (after notice in writing to the other party) by the President or Deputy President of the Royal Institute of Chartered Arbitrators.

Commencement Information

I127 Sch. 12 para. 22 in force at 7.9.2016, see [art. 1\(2\)](#)

PART 12

Protection for Hornsea One companies

1. The provisions of this Part apply for the protection of the Hornsea One companies unless otherwise agreed in writing between the undertaker and the Hornsea One companies.

Commencement Information

I128 Sch. 12 Pt. 12 para. 1 in force at 7.9.2016, see [art. 1\(2\)](#)

2. In this Part—

“apparatus” means the cables, structures or other infrastructure owned, occupied or maintained by any Hornsea One company or its successor in title, including any offshore transmission owner, within the Hornsea One Order land;

“construction” includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and “construct” and “constructed” must be construed accordingly;

“Hornsea One” means the wind farms to be constructed pursuant to the Hornsea One Order including, whether pursuant to the Hornsea One Order or otherwise, all elements of the connection of the wind farms to the National Grid at North Killingholme substation;

“Hornsea One company” means an undertaker with the benefit of all or part of the Hornsea One Order for the time being, being the holder of a licence under section 6 of the 1989 Act; and “Hornsea One companies” means all such undertakers;

“Hornsea One disposal areas” means disposal site reference HU209 and HU210 whose co-ordinates are specified in the deemed marine licence in Schedule 11 to the Hornsea One Order;

“Hornsea One Order” means the Hornsea One Offshore Wind Farm Order 2014;

“Hornsea One Order land” means the land within the Order limits defined in the Hornsea One Order together with the land edged red on plan HOW01095_4 submitted to support planning application reference PA/2015/0398 submitted to North Lincolnshire Council;

“plans” includes sections, drawings, specifications, designs, design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the Hornsea One Order land;

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“proposed Hornsea One circuit route” means the proposed route for any electrical circuit to serve Hornsea One as shown on plans produced to the undertaker by the relevant Hornsea One company pursuant to paragraph 16;

“relevant Hornsea One company” means the Hornsea One company whose undertaking includes the part of Hornsea One or the part of the Hornsea One Order land affected by the particular proposals of the undertaker;

“specified works” means so much of any works or operations authorised by this Order (or authorised by any planning permission or marine licence intended to operate in conjunction with this Order) as is—

- (a) in, on, under, over or within 500 metres of a proposed Hornsea One circuit route or existing installed electrical circuit (seaward of MHWS);
- (b) in, on, under, over or within 25 metres of a proposed Hornsea One circuit route or existing installed electrical circuit (landward of MHWS); or
- (c) in, on, under, over or within 1,000 metres of other apparatus installed or to be installed as part of Hornsea One.

Commencement Information

I129 Sch. 12 Pt. 12 para. 2 in force at 7.9.2016, see [art. 1\(2\)](#)

3. The consent of a Hornsea One company under this Part is not required where the Hornsea One Order has expired without the authorised development having been commenced pursuant to requirement 1 of Part 3 of Schedule 1 to the Hornsea One Order or the project has been abandoned.

Commencement Information

I130 Sch. 12 Pt. 12 para. 3 in force at 7.9.2016, see [art. 1\(2\)](#)

4. Where conditions are included in any consent granted by a Hornsea One company pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by the relevant Hornsea One company.

Commencement Information

I131 Sch. 12 Pt. 12 para. 4 in force at 7.9.2016, see [art. 1\(2\)](#)

5. It is reasonable for the relevant Hornsea One company to require as a condition of granting consent under this Part that the undertaker enter into a cable proximity agreement on reasonable terms reflecting industry good practice if the undertaker proposes to install an electrical circuit at any point closer than 500 metres to the centre line of any electrical circuit installed to serve Hornsea One or is to cross a proposed Hornsea One circuit route.

Commencement Information

I132 Sch. 12 Pt. 12 para. 5 in force at 7.9.2016, see [art. 1\(2\)](#)

6. The undertaker must not under the powers of this Order—

- (a) acquire any of the Hornsea One Order land or acquire new or existing rights or interfere with existing rights or impose restrictive covenants or acquire any rights of temporary

use over or in relation to the Hornsea One Order land without the consent of the relevant Hornsea One company, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions;

- (b) carry out any specified works without the consent of the relevant Hornsea One company, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

Commencement Information

I133 Sch. 12 Pt. 12 para. 6 in force at 7.9.2016, see [art. 1\(2\)](#)

7.—(1) Subject to obtaining consent pursuant to paragraph 6(b) and before beginning to construct any specified works, the undertaker must submit plans of the specified works to the relevant Hornsea One company and must submit such further particulars available to it that the relevant Hornsea One company may reasonably require.

(2) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by the relevant Hornsea One company.

(3) Any approval of the relevant Hornsea One company required under this paragraph may be made subject to such reasonable conditions as it may make for the protection of the Hornsea One Order Land, the apparatus and apparatus for Hornsea One not yet installed.

(4) If any part of the specified works is constructed otherwise than in accordance with the requirements of this Part, the relevant Hornsea One company may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part.

Commencement Information

I134 Sch. 12 Pt. 12 para. 7 in force at 7.9.2016, see [art. 1\(2\)](#)

8. The undertaker must give to the relevant Hornsea One company not less than 28 days' written notice of its intention to commence the construction of the specified works and, not more than 28 days after completion of their construction, must give the relevant Hornsea One company written notice of the completion.

Commencement Information

I135 Sch. 12 Pt. 12 para. 8 in force at 7.9.2016, see [art. 1\(2\)](#)

9. The undertaker must at all reasonable times during construction of the specified works and thereafter allow the relevant Hornsea One company and its servants and agents access to the works and all reasonable facilities for inspection of the works.

Commencement Information

I136 Sch. 12 Pt. 12 para. 9 in force at 7.9.2016, see [art. 1\(2\)](#)

10. After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from the relevant Hornsea One company requiring the undertaker so to do, remove the temporary works or any materials relating to them that may have been placed by or on behalf of the undertaker—

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- (a) in, on, under, over, or within 500 metres of a proposed Hornsea One circuit route or existing installed electrical circuit (seaward of MHWS); or
- (b) in, on, under, over, or within 25 metres of a proposed Hornsea One circuit route or existing installed electrical circuit (landward of MHWS).

Commencement Information

I137 Sch. 12 Pt. 12 para. 10 in force at 7.9.2016, see [art. 1\(2\)](#)

11. With the exception of any duty owed by the relevant Hornsea One company to the undertaker expressly provided for in the foregoing provisions of this Part, nothing in this Order must be construed as imposing on the relevant Hornsea One company, either directly or indirectly, any form of duty or liability to which the relevant Hornsea One company would not otherwise be subject which is enforceable by proceedings before any court.

Commencement Information

I138 Sch. 12 Pt. 12 para. 11 in force at 7.9.2016, see [art. 1\(2\)](#)

12. The undertaker must consult the relevant Hornsea One company in relation to any draft disposal plan which proposes to deposit material within the Hornsea One disposal areas and must make such amendments as are reasonably requested by the relevant Hornsea One company before submission to the MMO for approval.

Commencement Information

I139 Sch. 12 Pt. 12 para. 12 in force at 7.9.2016, see [art. 1\(2\)](#)

13. Subject to complying with all relevant health and safety considerations, the undertaker must permit representatives of the relevant Hornsea One company on any vessel carrying out dredging or disposal activities related to the Hornsea One disposal areas to monitor and verify the dredging and disposal carried out in terms of location, method, timing, quantity, nature of materials and other relevant matters.

Commencement Information

I140 Sch. 12 Pt. 12 para. 13 in force at 7.9.2016, see [art. 1\(2\)](#)

14. The undertaker must give reasonable notice in writing to the relevant Hornsea One company of the intended departure of all vessels referred to in paragraph 13 together with written information concerning the proposed dredging and disposal activities and must comply with all reasonable requests from the relevant Hornsea One company to enable the verification referred to in that paragraph to be carried out effectively and efficiently.

Commencement Information

I141 Sch. 12 Pt. 12 para. 14 in force at 7.9.2016, see [art. 1\(2\)](#)

15. The undertaker must provide to the relevant Hornsea One company a copy of each disposal return required to be submitted to the MMO pursuant to the approved disposal plan under this Order relevant to the Hornsea One disposal areas, such returns to include, without limitation, the actual

volumes of materials disposed of, the disposal locations, the approved monitoring plan and the results of monitoring conducted.

Commencement Information

I142 Sch. 12 Pt. 12 para. 15 in force at 7.9.2016, see [art. 1\(2\)](#)

16. To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order request up-to-date written confirmation from the relevant Hornsea One company of the precise route of any existing installed apparatus and any proposed Hornsea One circuit route or other apparatus to be installed by the relevant Hornsea One company.

Commencement Information

I143 Sch. 12 Pt. 12 para. 16 in force at 7.9.2016, see [art. 1\(2\)](#)

17. The undertaker and the Hornsea One companies must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

Commencement Information

I144 Sch. 12 Pt. 12 para. 17 in force at 7.9.2016, see [art. 1\(2\)](#)

18. Any dispute arising between the undertaker and the relevant Hornsea One company under this Part must be determined by arbitration under article 41 (arbitration).

Commencement Information

I145 Sch. 12 Pt. 12 para. 18 in force at 7.9.2016, see [art. 1\(2\)](#)

Changes to legislation:

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 Pt.03 para. 6(l) words substituted by [S.I. 2016/1104 Sch.](#)
- Sch. 12 Pt. 6 para. 5(a) words substituted by [S.I. 2016/1154 Sch. 29 Pt. 2 para. 118\(4\)](#)