

## SCHEDULE 12

### Protective provisions

## 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

II 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;

“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;

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“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.

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**Commencement Information**

**I2** 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.

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**Commencement Information**

**I3** 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.

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**Commencement Information**

**I4** 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.

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**Commencement Information**

**I5** 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**

**I6** 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**

**I7** 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 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**

**I8** 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

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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**

**19** 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**

**110** 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**

**111** 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**

**I12** 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**

**I13** 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**

**I14** 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**

**I15** 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 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**

**I16** 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.

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**Commencement Information**

**I17** 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**

**I18** 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**

**I19** 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**

**I20** 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**

**I21** 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.

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**Commencement Information**

**I22** Sch. 12 para. 22 in force at 7.9.2016, see [art. 1\(2\)](#)

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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\(4\)](#)