

SCHEDULE 9

Protective provisions

PART 7

For the protection of Rhyl Flats Wind Farm Limited

Application

79. The provisions of this Part apply for the protection of the Company unless otherwise agreed in writing between the undertaker and the Company.

Interpretation

80. In this Part—

“apparatus” means the cables, anchors, moorings, vessels, stabilisation systems, structures or other infrastructure owned, occupied or maintained by the Company or its successor in title within the Rhyl Flats Lease Area;

“Company” means Rhyl Flats Wind Farm Limited (company number 05485961) whose registered office is at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB;

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

“method statement” means a written statement setting out the methodology for implementation of the specified works including—

- (a) construction methods and programmes;
- (b) vessel handling and positioning systems;
- (c) trenching/cable burial details;
- (d) scour protection and mattress laying;
- (e) securing access by the Company to apparatus throughout the duration of the specified works (subject to paragraph 84 of this Part);
- (f) such further particulars available to it that the Company may reasonably require;

“plans” includes sections, drawings, calculations and details of the specified works including the extent, timing and duration of any proposed occupation of the Rhyl Flats Restriction Zone;

“Rhyl Flats Restriction Zone” means the 250m restriction zone around the perimeter of the Rhyl Flats Lease Area;

“Rhyl Flats Lease Area” means the land leased by the Crown Estate Commissioners to the Company for the operation of the Rhyl Flats Offshore Wind Farm;

“Rhyl Flats Offshore Wind Farm” means the offshore wind farm operated by the Company within the Rhyl Flats Lease Area;

“specified works” means works for the construction, maintenance or replacement of so much of Work No. 2 as is within 250 metres of the perimeter of the Rhyl Flats Lease Area, including survey works.

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Consent for specified works

81. Where conditions are included in any consent granted by the 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 Company.

82.—(1) The undertaker must not under the powers of this Order carry out any specified works without the consent of the Company, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions (including in relation to co-ordination of works between the undertaker and the Company) and if the Company does not respond within 56 days then consent is deemed to be given.

(2) Any application for consent pursuant to sub-paragraph (1) must be accompanied by—

- (a) plans of the specified works;
- (b) a method statement;
- (c) such further particulars available to the undertaker that the Company may reasonably require.

(3) Any approval of the Company required under this paragraph may be made subject to such reasonable conditions as may be required for the protection of any apparatus or for the alteration of any apparatus required as a direct consequence of the specified works or for securing access to any apparatus.

(4) Where the Company requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the Company's reasonable satisfaction.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any specified works, new plans or a revised method statement instead of the plans or method statement previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans or method statement.

(6) The specified works must be carried out in accordance with the consent given, or deemed to be given, in terms of sub-paragraph (1).

83.—(1) The undertaker must give to the Company not less than 28 days' written notice of its intention to commence the undertaking of the specified works and, not more than 14 days after completion of their implementation, must give the Company written notice of the completion.

(2) The undertaker is not required to comply with paragraph 82 or sub-paragraph (1) in a case of emergency, but in that case it must give to the Company notice as soon as is reasonably practicable and a plan, sections and description of those works as soon as reasonable practicable subsequently and must comply with paragraph 82 in so far as is reasonably practicable in the circumstances.

(3) The Company is entitled to have not more than two representatives present while any specified works are being carried out by the undertaker and the following provisions shall apply to such representatives—

- (a) any representatives must be suitably qualified and must comply with the Marine Labour Convention (2006) standards, guidelines and regulations;
- (b) the representatives may be located on any vessel carrying out specified works and must have full and free access at all times to all activities related to the specified works;
- (c) the undertaker must afford the representatives its full cooperation in the execution of the representatives' duties; and
- (d) the representatives' only function is to safeguard the interests of the Company and they shall have no duty to ensure or procure the doing of anything for the benefit of the

undertaker or to prevent anything which may be to the detriment of the undertaker, provided however that the representatives must act in good faith at all times.

84.—(1) The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by the Company to any apparatus unless agreed with the Company and in accordance with any reasonable conditions which may be required by the Company or where required by law or for health and safety reasons.

(2) The undertaker must give to the Company not less than 28 days' written notice of its intention to exercise powers which will prevent or interfere with the access by the Company to any apparatus.

85. To ensure its compliance with this Part, the undertaker must before carrying out any specified works and at the undertaker's own cost, carry out all surveys reasonably necessary to confirm the actual position of apparatus unless otherwise agreed with the Company in writing, such agreement not to be unreasonably withheld or delayed. The Company shall provide on request any reasonable assistance required from the Company of the location of any apparatus.

86. The undertaker and the Company 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.

Expenses

87.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to the Company on demand all reasonable charges, costs and expenses reasonably incurred by the Company direct consequence of the execution of any specified works including without limitation in respect of—

- (a) the approval of plans and method statements;
- (b) the carrying out of protective works (including any temporary protective works and their removal);
- (c) the survey of any land, apparatus or works, the inspection and monitoring of any specified works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such specified works referred to in this Part of this Schedule; and
- (d) any additional costs incurred in the decommissioning of Rhyl Flats Offshore Wind Farm as a result of the specified works.

Indemnity

88.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the carrying out of any specified works authorised by this Part or in consequence of the construction, use, maintenance or failure of any of the authorised development within 250 metres of the perimeter of the Rhyl Flats Lease Area by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out any specified works (including without limitation specified works carried out by the undertaker under this Part), there is any subsidence resulting from any of these specified works, or any damage is caused to any apparatus or property of the Company, or as consequence of the specified works, there is any interruption or reduction in any electricity generated by the Company, or the Company becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from the Company the cost reasonably and properly incurred by the Company in making good such damage or restoring the supply; and

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- (b) indemnify the Company for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs reasonably and properly incurred by or recovered from the Company, by reason or in consequence of any such damage or interruption or the Company becoming liable to any third party as aforesaid other than arising from any default by the Company,

provided that at all times the Company will be under an obligation to take reasonable steps to mitigate its loss.

(2) The fact that any act or thing may have been done by the Company on behalf of the undertaker or in accordance with a plan or method statement approved by the Company or in accordance with any requirement of the Company as a consequence of the carrying out of any specified works or under its supervision does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this paragraph unless the Company fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and the Company.

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the Company, its officers, employees, contractors or agents;
- (b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) The Company must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand, unless payment is required in connection with a statutory compensation scheme, is to be made without first consulting the undertaker and considering its representation.

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

Arbitration

89. Any dispute arising between the undertaker and the Company under this Part must be determined by arbitration under article 44 (arbitration).