

## SCHEDULE 10

### Protective Provisions

## PART 6

### Protection for East Anglia ONE Offshore Wind Farm and East Anglia THREE Offshore Wind Farm

1. For the protection of the statutory undertakers referred to in this part of this Schedule the following provisions have effect unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned.

2. In this part of this schedule—

“apparatus” means electric lines or electrical plant (as defined in the 1989 Act) belonging to or maintained by the statutory undertaker;

“plan” or “plans” includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“specified works” means works authorised by this Order (or authorised by any marine licence intended to operate in conjunction with this Order) that are to be carried out within 750 metres of apparatus belonging to a statutory undertaker; and

“statutory undertaker” means, as appropriate—

- (a) the statutory undertaker who owns and/or operates the transmission assets under the East Anglia ONE Offshore Wind Farm Order 2014(1);
- (b) the statutory undertaker who owns and/or operates the transmission assets under the East Anglia THREE Offshore Wind Farm Order 2017(2).

3.—(1) Not less than 56 days (or such lesser period agreed by the statutory undertaker, acting reasonably) before commencing the execution of any specified works, the undertaker must submit to the statutory undertaker a plan.

(2) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (1) applies until the statutory undertaker has given written approval of the plan so submitted.

(3) Any approval of the statutory undertaker required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (4), (6) or (7);
- (b) must not be unreasonably withheld or delayed.

(4) In relation to a work to which sub-paragraph (1) applies, the statutory undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus provided that such modifications are made within a period of 56 days beginning with the date on which the plan under sub-paragraph (1) is submitted to it (or such lesser period agreed by the statutory undertaker, acting reasonably). For the avoidance of doubt, provided that any further iterations of the plan submitted to the statutory undertaker for approval as a result of modifications required under this paragraph are not materially

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(1) [S.I. 2014/1599](#).

(2) [S.I. 2017/826](#).

*Status: This is the original version (as it was originally made).*

different to the modifications previously made by the statutory undertaker, any further required modifications will be made by the statutory undertaker as soon as reasonably practicable thereafter and in any event within 21 days of receipt of any further plans.

(5) Specified works executed under this Order must be executed only in accordance with the plan, submitted under sub-paragraph (1), as amended from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4) or (6) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(6) Where the statutory undertaker requires any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the statutory undertaker's satisfaction prior to the carrying out of any specified works authorised by this Order or any relevant part thereof (unless otherwise agreed by the statutory undertaker, acting reasonably) and the statutory undertaker must give notice of such works as soon as reasonably practicable and in any event within 56 days from the date of submission of a plan in line with sub-paragraph (1) (except in an emergency).

(7) In relation to a specified work to which sub-paragraph (1) applies, it is reasonable for a statutory undertaker to require as a condition of granting approval that the undertaker enter into a cable proximity agreement on reasonable terms reflecting industry good practice.

(8) 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 works (unless otherwise agreed by the statutory undertaker, acting reasonably), a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(9) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to the statutory undertaker notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraph (4) and (6) insofar as is reasonably practicable in the circumstances.

## **Expenses**

4. Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker on demand all charges, costs and expenses reasonably and properly incurred by that statutory undertaker in, or in connection with, the inspection, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to herein including without limitation—

- (a) the approval of plans;
- (b) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (c) the survey of apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to herein.

## **Compensation**

5.—(1) Subject to sub-paragraphs (2), (3) and (4), if by reason or in consequence of the construction of any such works authorised herein or in consequence of the construction, use, maintenance or failure of any of the authorised development 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 the undertaker) in the course of carrying out such works, including without limitation works carried out

by the undertaker under the provisions herein or any subsidence resulting from any of these works), any damage is caused to any apparatus of the statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the statutory undertaker, or the statutory undertaker becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by the statutory undertaker in making good such damage or restoring the supply; and
- (b) compensate the statutory undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the statutory undertaker, by reason or in consequence of any such damage or interruption or the statutory undertaker becoming liable to any third party in accordance with the provisions of this part.

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

(3) 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 neglect or default of the statutory undertaker, its officers, servants, contractors or agents.

(4) The statutory undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without first consulting the undertaker and considering their representations (such representations not to be unreasonably withheld or delayed).

### **Co-operation**

6. Where in consequence of the proposed construction of any of the authorised development, a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 3 the undertaker must use its best endeavours to co-ordinate the execution 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 the statutory undertaker's undertaking and the statutory undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

### **Arbitration**

7. Any difference or dispute arising between the undertaker and the statutory undertaker must, unless otherwise agreed in writing between the undertaker and the statutory undertaker, be determined by arbitration in accordance with article 37 (arbitration) of the Order.