

## SCHEDULE 17

### Protective Provisions

## PART 8

### For the protection of Ørsted Hornsea Project Three (UK) Ltd

**82.** The provisions of this Part apply for the protection of Orsted unless otherwise agreed in writing between the undertaker and Orsted.

#### Commencement Information

**II** Sch. 17 para. 82 in force at 1.1.2022, see [art. 1](#)

**83.** In this Part—

“apparatus” means the cables, structures or other infrastructure owned, occupied or maintained by Orsted or its successor in title within the Hornsea Three Order Land;

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

“Crossing Area” means the land within land parcel 21/08 shown on the land plans and described in the book of reference;

“Orsted” means an undertaker with the benefit of all or part of the Hornsea Three Order for the time being;

“Hornsea Three Order” means the development consent order made by the Secretary of State in relation to Hornsea Three Offshore Wind Farm on 31st December 2020<sup>(1)</sup>;

“Hornsea Three Order land” means Order land as defined in the Hornsea Three Order;

“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 Three Order land;

“proposed Hornsea Three Cable Corridor” means the proposed location for any electrical circuit(s) and construction compound(s) permitted by the Hornsea Three Order within the Hornsea Three Order land;

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

- (a) within the Crossing Area;
- (b) in, on, under, over or within 25 metres of the proposed Hornsea Three Cable Corridor or any apparatus; or
- (c) may in any way adversely affect any apparatus.

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(1) [S.I. 2020/1656](#).

**Commencement Information**

**I2** Sch. 17 para. 83 in force at 1.1.2022, see [art. 1](#)

**84.** The consent of Orsted under this Part is not required where the Hornsea Three Order has expired without the authorised development having been commenced pursuant to paragraph 1 of Part 3 of Schedule 12 to the Hornsea Three Order.

**Commencement Information**

**I3** Sch. 17 para. 84 in force at 1.1.2022, see [art. 1](#)

**85.** Where conditions are included in any consent granted by Orsted 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 Orsted.

**Commencement Information**

**I4** Sch. 17 para. 85 in force at 1.1.2022, see [art. 1](#)

- 86.** The undertaker must not under the powers of this Order—
- (a) acquire, extinguish, suspend, override or interfere with any rights that Orsted has in respect of any apparatus or the proposed Hornsea Three Cable Corridor; or
  - (b) acquire the Hornsea Three Order land or acquire any new rights or impose restrictive covenants or exercise any powers of temporary use over or in relation to the Hornsea Three Order land without the consent of Orsted, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

**Commencement Information**

**I5** Sch. 17 para. 86 in force at 1.1.2022, see [art. 1](#)

**87.—(1)** The undertaker must not under the powers of this Order carry out any specified works without the consent of Orsted, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if Orsted does not respond within 30 days then consent is deemed to be given.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and before beginning to construct any specified works, the undertaker must submit plans of the specified works to Orsted and must submit such further particulars available to it that Orsted may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by Orsted.

(4) Any approval of Orsted required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus or the proposed Hornsea Three Cable Corridor or for securing access to any apparatus or the proposed Hornsea Three Cable Corridor;

(5) Without limiting sub-paragraph (1), it is not reasonable for Orsted to withhold or delay any consent or approval under this Part in relation to specified works in, on, under, or over the Crossing Area solely on the basis of thermal interaction where the plans of the specified works submitted under sub-paragraph (2) demonstrate that all reasonable steps have been taken to minimise thermal

interaction between the specified works and any apparatus or the proposed Hornsea Three Cable Corridor.

(6) Where Orsted 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 Orsted's reasonable satisfaction.

(7) Nothing in this paragraph precludes the 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 specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

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**Commencement Information**

**16** Sch. 17 para. 87 in force at 1.1.2022, see [art. 1](#)

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

(2) The undertaker is not required to comply with paragraph 87 or 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 paragraph 87 in so far as is reasonably practicable in the circumstances.

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**Commencement Information**

**17** Sch. 17 para. 88 in force at 1.1.2022, see [art. 1](#)

**89.** The undertaker must at all reasonable times during construction of the specified works allow Orsted and 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**

**18** Sch. 17 para. 89 in force at 1.1.2022, see [art. 1](#)

**90.**—(1) 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 Orsted requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Crossing Area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), Orsted may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

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**Commencement Information**

**19** Sch. 17 para. 90 in force at 1.1.2022, see [art. 1](#)

**91.** If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to

such apparatus as will enable Orsted to maintain or use the apparatus no less effectively than was possible before the obstruction.

**Commencement Information**

**I10** Sch. 17 para. 91 in force at 1.1.2022, see [art. 1](#)

**92.** The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by Orsted to the proposed Hornsea Three Cable Corridor.

**Commencement Information**

**I11** Sch. 17 para. 92 in force at 1.1.2022, see [art. 1](#)

**93.** To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within the Crossing Area request up-to-date written confirmation from Orsted of the location of any apparatus or the proposed Hornsea Three Cable Corridor.

**Commencement Information**

**I12** Sch. 17 para. 93 in force at 1.1.2022, see [art. 1](#)

**94.** The undertaker and Orsted must each act in good faith and use reasonable endeavours to cooperate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

**Commencement Information**

**I13** Sch. 17 para. 94 in force at 1.1.2022, see [art. 1](#)

**95.** The undertaker must pay to Orsted the reasonable expenses incurred by Orsted in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the proposed Hornsea Three Cable Corridor.

**Commencement Information**

**I14** Sch. 17 para. 95 in force at 1.1.2022, see [art. 1](#)

**96.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by Orsted, or Orsted becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Orsted in making good such damage or restoring the service or supply; and
- (b) compensate Orsted for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Orsted, by reason or in consequence of any such damage or interruption or Orsted becoming liable to any third party as aforesaid.

(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 Orsted, its officers, servants, contractors or agents.

(3) Orsted must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) Orsted must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 96 applies. If requested to do so by the undertaker, Orsted shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 96 for claims reasonably incurred by Orsted.

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

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**Commencement Information**

**I15** Sch. 17 para. 96 in force at 1.1.2022, see [art. 1](#)

**97.** Any dispute arising between the undertaker and Orsted under this Part must be determined by arbitration under article 38 (arbitration).

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**Commencement Information**

**I16** Sch. 17 para. 97 in force at 1.1.2022, see [art. 1](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Norfolk Boreas Offshore Wind Farm Order 2021, PART 8.