

SCHEDULE 16

Article 38

Procedure for discharge of requirements

Applications made for certain approvals

1.—(1) Where an application has been made to a discharging authority for any consent, agreement or approval required or contemplated by any of the requirements within Part 3 of Schedule 1 (requirements) to this Order—

- (a) the undertaker must give the discharging authority sufficient information to identify the requirement(s) to which the application relates; and
- (b) the undertaker must provide such particulars, plans and drawings as are reasonably considered necessary to deal with the application.

(2) The discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(3) For the purposes of this paragraph, the decision period is—

- (a) where no further information is requested under paragraph 2 (further information), 56 days from the day immediately following that on which the application is received by the discharging authority;
- (b) where further information is requested under paragraph 2 (further information) 42 days from the day immediately following that on which the further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in sub-paragraph (a) or (b).

Commencement Information

I1 Sch. 16 para. 1 in force at 22.4.2022, see [art. 1\(2\)](#)

Further information

2.—(1) In relation to any application to which this Schedule applies, the discharging authority has the right to request such further information from the undertaker as is reasonably necessary to enable it to consider the application.

(2) If the discharging authority considers such further information to be necessary it must, as soon as reasonably practicable and within 20 business days of receipt of the application notify the undertaker in writing specifying the further information required.

(3) If the discharging authority does not give such notification as specified in sub-paragraph (2) it is to be deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(4) A discharging authority may request further information under sub-paragraph (1) on more than one occasion provided that all such requests are made within the period specified by sub-paragraph (2).

Commencement Information

I2 Sch. 16 para. 2 in force at 22.4.2022, see [art. 1\(2\)](#)

Appeals

- 3.—(1) The undertaker may appeal to the Secretary of State in the event that—
- (a) the discharging authority refuses an application for any consent, agreement or approval required or contemplated by a requirement contained within Part 3 of Schedule 1 (requirements) to this Order or grants it subject to conditions to which the undertaker objects;
 - (b) the discharging authority does not give notice of its decision to the undertaker within the decision period specified in paragraph 1 (applications made for certain approvals);
 - (c) on receipt of a request for further information under paragraph 2 (further information) the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
 - (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.
- (2) The appeal process is as follows—
- (a) the undertaker must submit the appeal documentation to the Secretary of State, which must include a copy of the application submitted to the discharging authority and any supporting documentation which the undertaker may wish to provide;
 - (b) the undertaker must on the same day provide copies of the appeal documentation to the discharging authority and the relevant consultees (if applicable);
 - (c) as soon as is practicable after receiving the appeal documentation, but in any event within 28 business days of receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
 - (d) the discharging authority and the relevant consultees must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under sub-paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
 - (e) the appeal parties shall make any counter-submissions to the appointed person within 20 business days of receipt of written representations pursuant to sub-paragraph (d) above.
- (3) The appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and within 40 business days of—
- (a) the deadline within sub-paragraph (2)(e); or
 - (b) the deadline for written submissions in respect of further information submitted in accordance with sub-paragraph (5),

whichever is later.

(4) If the appointed person considers that further information is necessary to enable consideration of the appeal the appointed person must, as soon as practicable, and within 10 business days of the deadline for submissions in accordance with sub-paragraph (2)(e), or where further information has already been requested, within 10 business days of the deadline for written submissions in accordance sub-paragraph (5), notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required under sub-paragraph (4) is to be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the

date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 business days of that date.

(6) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to the appointed person in the first instance.

(7) The appointed person may proceed to a decision even though no written representations have been made within those time limits if it appears to the appointed person that there is sufficient material to enable a decision to be made.

(8) The decision of the appointed person on an appeal is to be final and binding on the appeal parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person under this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under Part 3 of Schedule 1 (requirements) as if it had been given by the discharging authority.

(10) Except where a direction is given under sub-paragraph (11) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person are to be met by the undertaker.

(11) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance on the award of costs or any circular or guidance which may from time to time replace it.

Commencement Information

I3 Sch. 16 para. 3 in force at 22.4.2022, see [art. 1\(2\)](#)

Interpretation of Schedule 16

4. In this Schedule—

“the appeal parties” means the discharging authority, the undertaker and any relevant consultees.

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971;

“discharging authority” means the body responsible for giving consent, agreement or approval pursuant to a requirement within Part 3 of Schedule 1 (requirements) to this Order;

“relevant consultee” means any body named in a requirement which is required to be consulted by the discharging authority in discharging that requirement.

Commencement Information

I4 Sch. 16 para. 4 in force at 22.4.2022, see [art. 1\(2\)](#)

Changes to legislation:

There are currently no known outstanding effects for the The East Anglia ONE North Offshore Wind Farm Order 2022, SCHEDULE 16.