

SCHEDULE 16

Protective Provisions

PART 4

Protection for Operators of Electronic Communications Code Networks

43.—(1) For the protection of any operator, the following provisions shall, unless otherwise agreed in writing between the undertaker and the operator, have effect.

(2) In this Part—

“the 2003 Act” means the Communications Act 2003⁽¹⁾;

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system is construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽²⁾;

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

Commencement Information

11 Sch. 16 para. 43 in force at 5.3.2022, see [art. 1](#)

44. The exercise of the powers of article 29 (statutory undertakers) are subject to Part 10 of Schedule 3A (the electronic communications code) to the 2003 Act.

Commencement Information

12 Sch. 16 para. 44 in force at 5.3.2022, see [art. 1](#)

45.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works—

(1) 2003 c. 21.

(2) See section 106.

Changes to legislation: There are currently no known outstanding effects for the The Norfolk Vanguard Offshore Wind Farm Order 2022, PART 4. (See end of Document for details)

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator, the undertaker shall bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—
 - (i) make reasonable compensation to an operator for loss sustained by it; and
 - (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall impose 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 an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand shall be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this paragraph shall be referred to and settled by arbitration under article 38 (arbitration).

Commencement Information

I3 Sch. 16 para. 45 in force at 5.3.2022, see [art. 1](#)

46. This Part does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

Commencement Information

I4 Sch. 16 para. 46 in force at 5.3.2022, see [art. 1](#)

47. Nothing in this Part shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Commencement Information

I5 Sch. 16 para. 47 in force at 5.3.2022, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Norfolk Vanguard Offshore Wind Farm Order 2022, PART 4.