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**Subject:** Rampion 2 - representations of Southern Water Services Ltd  
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[Letter to SoS 30 January 2025 - Southern Water Services Ltd.pdf](#)  
[Rampion 2 Offshore Wind - Southern Water preferred protective provisions - 29 January 2025\(154038875.1\).docx](#)

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Dear Sir / Madam

**RAMPION 2 OFFSHORE WIND FARM**  
**INTERESTED PARTY REFERENCE NUMBER: 20043512**

Please find attached letter from Southern Water Services Ltd together with enclosed preferred protective provisions.

We should be grateful if this would be placed before the Secretary of State at the earliest opportunity and in advance of the decision on whether to grant development consent.

Yours faithfully

**Sally Drury-Smith**  
**Environment & Planning Solicitor**

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[southernwater.co.uk](https://www.southernwater.co.uk)

sw-email-logo



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BY EMAIL ONLY

Date

30 January 2025

Contact

Tel [REDACTED]  
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Dear Secretary of State

**Rampion 2 Offshore Wind Farm (the Project) – DCO application**  
**Interested Party Reference Number: 20043512**

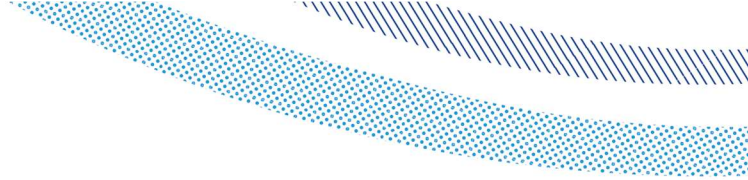
We write in advance of the Secretary of State's decision on whether to grant development consent for the Project, to provide an update on the status of negotiations in relation to the proposed protective provisions (PPs) to be included in the DCO, between the Rampion Extension Development Limited (the Applicant) and Southern Water Services Limited (SWS).

SWS has been negotiating PPs with the Applicant since 2023 in respect of the interface between SWS's apparatus and the Project, as the water and sewerage undertaker for the Project area. Negotiations are advanced and both parties have reached agreement on all but one matter, including that SWS's Washington Road Booster Station should be excluded from the DCO's removal of apparatus provisions. However, the parties are not agreed on the inclusion of a cap on the Applicant's liability under the PPs' indemnity provisions, which the Applicant only added into the PPs for the first time on 20<sup>th</sup> January 2025.

As a result, SWS has not been able to reach agreement in advance of the deadline for determination of the application for development consent, as it had expected, and, further to its letter to the Examining Authority on 1<sup>st</sup> August 2024, would like to update the Secretary of State that SWS is not able to withdraw its objection to the DCO application.

SWS requests that, if the DCO is made, its preferred protective provisions appended to this letter are included in the DCO, as these reflect the agreement reached between the parties on the various protections required by SWS, except for the inclusion of a cap on the indemnity. SWS requires adequate indemnity provisions for any works that interface with its apparatus, particularly where there is a significant interface over a large geographic area. Risk associated with a third-party project should not be for SWS and its customers to bear or subsidise. The nature or extent of the potential liabilities or damages that may arise from the Applicant's actions or omissions is not currently clear or quantifiable, therefore all possible scenarios or contingencies must be covered.

An uncapped indemnity is the most efficient, conventional and appropriate way of addressing this. The Applicant has provided no justification for its proposal to cap the indemnity other than a blanket position that it does not accept uncapped indemnities, and it does not reflect SWS's standard and precedent approach as a critical statutory undertaker when interfacing with third party Nationally Significant Infrastructure Projects. In addition, the standard protective provisions for water and sewerage undertakers included in Part 1 of Schedule 10 to the final draft DCO submitted at Deadline 6 (Document Reference: REP6-007) do not include a cap on the Applicant's cost liability in the event of damage or interruption to SWS's undertaking.



Accordingly, it is not appropriate for a cap on liability to be included in the PPs given the risk that SWS and its customers, through no fault of their own, could be exposed to significant economic loss as a result of construction of the Project. SWS did not have the opportunity to make these submissions during the Examination, as the Applicant only included this substantive point of disagreement in the version of the PPs it provided to SWS on 20 January 2025. Therefore, SWS is submitting at the earliest opportunity that its PPs are to be preferred and invites the Secretary of State to conclude accordingly, and that therefore there should be no cap on the indemnity, if development consent is to be granted.

SWS would be happy to answer any questions that the Secretary of State may have in relation to these issues.

Yours sincerely

Southern Water Services Limited

## **MODIFIED PROTECTIVE PROVISIONS**

### **PROTECTIVE PROVISIONS**

#### **FOR THE PROTECTION OF SOUTHERN WATER SERVICES LIMITED**

##### **Application**

1. For the protection of the affected undertakers referred to in this Part of this Schedule the following provisions must, unless otherwise agreed in writing between the undertaker and the affected undertaking concerned, have effect.

2. In this Part of this Schedule—

“affected undertaker” means —

- (a) a water undertaker within the meaning of the Water Industry Act 1991<sup>(1)</sup> (a “water undertaker”); and
- (b) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991 (a “sewerage undertaker”),

for the area of the authorised development and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;

“alternative apparatus” means alternative apparatus adequate to enable the affected undertaker to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (c) in the case of a water undertaker—
  - (i) any mains, pipes, pumping stations, connections, reservoirs, water booster stations or any other ancillary apparatus or installation belonging to or maintained by that affected undertaker for the purposes of water supply, water removal or drainage; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or other works vested in the affected undertaker in accordance with the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewerage disposal works, at a future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“plan” includes all designs, drawings, specifications, design principles, site locations, accesses, method statements, soil reports, programmes, calculations, risk assessments, standoff distances and other documents that are reasonably necessary to properly and sufficiently to describe the works to be executed.

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<sup>1</sup> 1991 c.56

“Washington Booster Station” means the booster station owned by Southern Water Services Limited at London Road, Washington.

### **Precedence of the 1991 Act in respect of apparatus in the streets**

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

### **Apparatus in stopped up streets**

4. Regardless of the temporary stopping up or diversion of any street under the powers conferred by article 11 (temporary closure of streets), an affected undertaker is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street subject to serving 7 days’ notice on the undertaker (save in cases of emergency).

### **Protective works to buildings**

5.(1) The undertaker, in the case of the powers conferred by article 18 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

(2) Where the undertaker proposes to provide to the affected undertaker an alternative means of access to any apparatus in compliance with sub-paragraph (1), the powers conferred by article 18 (protective works to buildings) must not be exercised until the affected undertaker has approved the proposed alternative means of access (such approval not to be unreasonably withheld or delayed).

### **Removal of apparatus**

6.(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the affected undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of an affected undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the affected undertaker in question in accordance with sub-paragraphs (1) to (8).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the affected undertaker in question 56 days’ written notice of that requirement, together with a plan of the work proposed and, if the undertaker has designed the works, showing the proposed location of the alternative apparatus and accesses to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the affected undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for the affected undertaker to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker and the undertaker or in default of agreement settled in accordance with article 48 (arbitration).

(5) The affected undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with article 48 (arbitration), and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), the undertaker may give notice in writing to the affected undertaker requesting that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, and the affected undertaker will refer to its own guidance, policies and specifications for carrying out works of that nature, and if agreed by the affected undertaker (such agreement not to be unreasonably withheld or delayed), that work, instead of being executed by the affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected undertaker.

(7) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker will, before taking any steps that will trigger the need for those substitution works, comply with the affected undertaker's standard procedures for approval of such works as set out in the affected undertaker's Guidance for a Southern Water led diversion of public sewers as may be updated from time to time for a reasonable period of time to enable the affected undertaker to:

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

(8) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standoff distances agreed between the parties under subparagraph (2).

### **Facilities and rights for alternative apparatus**

7.(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled in accordance with article 48 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the independent expert less favourable on the whole to the affected undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) In settling those terms and conditions in respect of alternative apparatus, the arbitrator will—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or on the land for which the alternative apparatus is to be substituted.

(4) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2016 or other legislation.

## **Retained apparatus**

8. (1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6, the undertaker must submit to the affected undertaker in question a plan of the works to be executed for approval by the affected undertaker.

(2) The undertaker must not commence the works outlined in paragraph 8(1) until the plan of works has been approved by the affected undertaker (such approval not to be unreasonably withheld or delayed).

(3) If the affected undertaker does not approve the plan of works submitted under paragraph 8(1), it may request reasonable amendments to be made and may require the undertaker to re-submit the plan of works for approval to the affected undertaker. The affected undertaker must advise the undertaker within 14 days of submission of the revised plan of works whether it is approved.

(4) If the revised plan of works is not approved within 14 days, either the affected undertaker or undertaker may require a meeting to be held within 28 days of submission of the revised plan of works between the chief engineers or a suitably qualified alternative representative of the undertaker and the affected undertaker to agree the plan of works.

(5) If the undertaker and the affected undertaker fail to reach an agreement on the plan of works, the dispute shall be resolved in accordance with article 48 (arbitration).

(6) Prior to submitting a plan of the works to be executed under sub-paragraph 8(1), the undertaker must consult with the affected undertaker in relation to its proposals for the works and share a draft plan of the works for the affected undertaker to review and provide feedback no later than 28 days after receiving the draft plan and as part of that feedback the affected undertaker may request that testing or surveys are undertaken prior submitting the plan of works under sub-paragraph 8(1).

(7) The affected undertaker is entitled to watch and inspect the execution of the works detailed by the plan of works.

(8) If an affected undertaker in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(9) 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 works, 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.

(10) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the affected undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements of the affected undertaker in so far as is reasonably practicable in the circumstances.

(11) For the purposes of sub-paragraph (1), works are deemed to be in land near a water undertaker's or a sewerage undertaker's apparatus (where it is underground apparatus) if those works fall within the standoff distances agreed between the parties under subparagraph (2).

## **Expenses and costs**

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker all expenses reasonably incurred by that affected undertaker in, or in connection with, the inspection, surveying, testing, identification, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in connection with the authorised development.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (6), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—



- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined in accordance with article 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, noting any replacement apparatus must be in accordance with the affected undertaker's standard asset list at the time of the works, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (1), the identification of any apparatus will include any surveys and investigations as may be reasonably necessary to identify the specific location of an affected undertaker's apparatus.

(5) For the purposes of sub-paragraph (2)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus that has reached the end of its design life so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**10.—**(1) Subject to sub-paragraphs (2), (3) and (4), if by reason or in consequence of the construction or maintenance of any of the authorised development or for any such works referred to in paragraphs 6 or 8(1) any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and
- (b) indemnify that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by an affected undertaker on behalf of the undertaker or in accordance with a plan approved by an affected undertaker or in accordance with any requirement of an affected undertaker or under its supervision does not, subject to sub-paragraph (3) excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraphs (1) and (2) 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 an affected undertaker, its officers, servants, contractors or agents.

(4) An affected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

## Cooperation

11. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or an affected undertaker requires the removal of apparatus under paragraph 6(2) or an affected undertaker makes requirements for the protection or alternation of apparatus under paragraph 8, the undertaker must use reasonable 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 affected undertaker's undertaking and each affected undertaker must use its reasonable endeavours to co-operate with the undertaker for that purpose.

12. Where the undertaker identifies any apparatus which may belong to or be maintainable by an affected undertaker but which does not appear on any statutory map kept for the purpose by that affected undertaker, it shall inform that affected undertaker of the existence and location of the apparatus as soon as reasonably practicable and the apparatus identified shall be afforded the same protection as other assets belonging to the affected undertaker under this Part.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

14. The parties are to keep each other informed at reasonable intervals as to the progress of the authorised development and in relation to the affected undertaker's apparatus and shall meet once in each calendar month (unless otherwise agreed) during the construction of the authorised development to discuss such matters until a point in the programme where both parties agree that progress meetings are no longer required.

## **Access**

15. If in consequence of the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable the affected undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

## **Washington Booster Station**

16. Paragraph 6 (removal of apparatus), paragraph 7 (facilities and rights for alternative apparatus) and paragraph 8(8) (notice requiring the removal of apparatus) of this Part of this Schedule shall not have effect in relation to the affected undertaker's apparatus at its Washington Booster Station site and at a distance around the site to be agreed by the parties acting reasonably.

## **Acquisition of Land**

17.—(1) All acquisition of land, new rights and the imposition of restrictive covenants by the undertaker in the Order land will be subject to the existing rights and interests of the affected undertaker unless otherwise agreed between the parties acting reasonably.

(2) The Order will not be used to extinguish or override the rights or interests of the affected undertaker nor will the Order be used to appropriate or use that part of the subsoil of any street containing apparatus of the affected undertaker, save in accordance with the terms of this Part of Schedule 10.

(3) Where the undertaker takes temporary possession of any land under the Order or carries out survey works on land under the Order in respect of which the affected undertaker has an easement right or other interest, the affected undertaker has the same powers and rights in respect of its apparatus as it enjoyed before the exercise of the powers to take temporary possession or to carry out survey works, unless otherwise agreed by the parties acting reasonably.

(4) The undertaker shall not execute a general vesting declaration or notice to treat which includes the acquisition of land or rights for the affected undertaker's benefit without:

- (a) providing a draft general vesting declaration or notice to treat to the affected undertaker for their approval before executing that general vesting declaration or serving that notice to treat;

- (b) taking account of the affected undertaker's reasonable comments and ensuring that the rights included in the general vesting declaration or notice to treat are approved by the affected undertaker acting reasonably and without delay; and
- (c) the affected undertaker's written approval of the form of that draft general vesting declaration or notice to treat.

(5) The undertaker will not commence construction (and must not permit the commencement of such construction) of the authorised development on any land owned by the affected undertaker or in respect of which the affected undertaker has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of the affected undertaker's apparatus until the affected undertaker is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to the affected undertaker that it shall maintain such acceptable insurance for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and the affected undertaker has confirmed the same in writing to the undertaker.