

Application for proposed Rampion Offshore Wind Farm (EN010032)

Consultation on Draft Development Consent Order, 13 December 2013

The Order as last submitted to the ExA (applicant's version F) is shown in black text with changes proposed by the ExA shown as tracked changes in red and are identified by an accompanying explanation/request for information in the margin (numbered 1 to 27). Written explanations are not provided for minor drafting amendments. Interested Parties are requested to respond particularly to the proposed changes and where they are requested to do so and wherever relevant with the specific wording proposed.

Any suggested changes to the draft DCO are invited in the form of specific wording to revise or amend that included in the consultation draft and should be supported by a clear rationale with evidence where appropriate. It should be clearly stated whether the proposed change has been agreed with any other Interested Parties.

All responses to this draft Development Consent Order **must be received by the Planning Inspectorate by 12:00pm on Wednesday 8 January 2013**, and any responses received after this date may be disregarded.

Consideration of any draft Development Consent Order in the examination is without prejudice to the Panel's recommendation, and Secretary of State's decision, on whether consent should be granted.

For and on behalf of the Examining Authority.

13 December 2013.

201X No**INFRASTRUCTURE PLANNING****The Rampion Offshore Wind Farm Order 201X**

<i>Made</i>	***201●
<i>Laid before Parliament</i>	***201●
<i>Coming into force</i>	***201●

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Comment [I1]: The applicant, in responding to this consultation, is requested to provide 1) this version of the DCO but with the further tracked changes the applicant proposes included within it (in a Microsoft Word compatible file). The applicant is requested to include such changes as are necessary to ensure the DCO is in the correct form to be made as a Statutory Instrument . And 2) an all changes accepted, 'clean' version of the DCO as the applicant wishes it to be made (in a Microsoft Word compatible file). 3) one document which shows all tracked changes to date so there is a record of the history of amendments and additions (in a Microsoft Word compatible file)

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 - PART 1 — Licensed Marine Activities
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WHEREAS an application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) made under sections 37, 42, 48, 51, 56, 58, 59 and 232 of the Planning Act 2008 ("the 2008 Act")(b) for an Order under sections 37, 55, 115, 120, 121, 122, 140 and 149A of the 2008 Act;

AND whereas the application was examined by an examining authority appointed by the Secretary of State pursuant to Chapter 4 of the 2008 Act;

AND whereas the examining authority, having considered the national planning statements relevant to the application and concluded that the application accords with these statements as set out in section 104(3) of the 2008 Act;

AND whereas the examining authority, having considered the objections made and not withdrawn and the application with the documents that accompanied the application, has recommended that the decision-maker make an Order giving effect to the proposals comprised in the application with modifications which in its opinion do not make any substantial change to the proposals;

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- (a) S.I. 2009/2264 as amended by the Localism Act (Infrastructure Planning) (Consequential Amendments) Regulations 2012 S.I. 2012/635 and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 S.I. 2013/522
 - (b) 2008 c.29, Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20)

AND whereas notice of the decision-maker's determination was published [●];

NOW THEREFORE, as the decision-maker in exercise of the powers conferred by sections 114, 115, 120, 121, 122 and 149A of the 2008 Act the Secretary of State makes the following Order:

Citation and commencement

1. This Order may be cited as the Rampion Offshore Wind Farm Order and shall come into force on [●] 201[●].

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(a);

"the 1965 Act" means the Compulsory Purchase Act 1965(b);

"the 1980 Act" means the Highways Act 1980(c);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

"the 1990 Act" means the Town and Country Planning Act 1990(e);

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- (a) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order
- (b) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4, to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.150). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (c) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I.2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 65(5) of the Transport and Works Act 1992 and was amended by S.I.2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (d) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.
- (e) 1990 c.8. Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34). Section 106 was substituted, and section 106A inserted, by section 12(1) of the Planning and Compensation Act 1991. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. Sections 272 to 274 and section 279 were amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act 2003 c. 21, and section 280 was amended by section 406(1) of, and paragraph 104 of Schedule

"the 1991 Act" means the New Roads and Street Works Act 1991(a);

"the 2004 Act" means the Energy Act 2004(b);

"the 2008 Act" means the Planning Act 2008(c);

"the 2009 Act" means the Marine and Coastal Access Act 2009(d);

"access land" means the land described in **Schedule 6** (temporary suspension of public access to access land) that is access land for the purposes of the Countryside and Rights of Way Act 2000;

"access to works plan" means the plan certified as the access to works plan by the decision-maker for the purposes of this Order;

"ancillary works" means the ancillary works described in Part 2 of **Schedule 1** (ancillary works) and which are not development within the meaning of section 32 of the 2008 Act;

"approval authority" means a person or body that is responsible for approving details pursuant to a requirement in Part 3 of **Schedule 1** (requirements);

"array" means Work Nos. 1 and 2;

"authorised development" means the development and associated development described in Part 1 of **Schedule 1** (authorised project), which is development within the meaning of section 32 of the 2008 Act;

"authorised project" means the authorised development and the ancillary works authorised by this Order;

"book of reference" means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"CAA" means the Civil Aviation Authority constituted by the Civil Aviation Act 1982;

"cable ducts" means conduits for the installation of cables;

"carriageway" has the same meaning as in the 1980 Act;

"circuit" means up to three cables installed inside separate cable ducts, which are grouped together in a trefoil arrangement;

"commence" means, in relation to works seaward of MHWS, beginning to carry out any licensed marine activities authorised by the deemed marine licences at **Schedule 13** (deemed licence under the Marine and Coastal Access Act 2009 – array) and **Schedule 14** (deemed licence under the Marine and Coastal Access Act 2009 – export cables) other than pre-construction surveys or monitoring and, in respect of any other works comprised in the authorised project, any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the authorised project other than operations consisting of site clearance (excluding stripping of soil and the removal of trees and hedgerows), demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "commencement" shall be construed accordingly;

"compulsory acquisition notice" means a notice served in accordance with section 134 of the 2008 Act;

"connection works" means Work Nos. 3B to 32 and any related further associated development including, in relation to cable laying, jointing bays, manholes, marker posts and other works associated with cable laying;

"construction compound" means a secure construction site associated with the connection works including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

Comment [I2]: WSCC response to Deadline X1 suggested retention of the words 'demolition work' to bring the interpretation of this into line with the TCPA 1990 in which 'commence' includes demolition work. The ExA proposes to keep retention of this wording for reasons of precision and enforceability

17. to, that Act. Sections 272 to 274 were also amended by S.I. 2011/741 and S.I. 2012/2590. Section 282 was amended by S.I. 2009/1307. There are other amendments to the 1990 Act which are not relevant to this Order.

- (a) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (b) 2004 c.20, Section 105 was amended by section 69 of the Energy Act 2008 (c.32)
- (c) 2008 c.29
- (d) 2009 c.23

"construction laydown area" means a temporary secure storage area associated with the connection works that is moveable and positioned at locations along the working width, for materials, plant and equipment, which may include vehicle parking, wheel washing facilities and mobile units comprising access control room and welfare facilities;

"decision-maker" has the same meaning as in section 103 of the 2008 Act;

"deemed array marine licence" means the licence set out in **Schedule 13** (deemed licence under the Marine and Coastal Access Act 2009 – array) and deemed by **article 11** (deemed marine licence under the Marine and Coastal Access Act 2009) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

"deemed marine licences" means the deemed array marine licence and/or the deemed export cables marine licence;

"deemed export cables marine licence" means the licence set out in **Schedule 14** (deemed licence under the Marine and Coastal Access Act 2009 – export cables) and deemed by **article 11** (deemed marine licence under the Marine and Coastal Access Act 2009) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

"design principles supplementary document" means the document certified by the decision maker for the purposes of this Order

Comment [13]: This to secure compliance with new Requirement 1 – Design Principles.

"environmental statement" means the document certified as the environmental statement by the decision-maker for the purposes of this Order and submitted with the application on 1 March 2013;

"export cables" means Work No 3A;

"footpath stopping up and diversion plan" means the plan certified as the footpath stopping up and diversion plan by the decision-maker for the purposes of this Order;

"gravity base foundation" means a structure principally of concrete, steel or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or skirts, including associated sea bed preparation, scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side and work platforms and equipment;

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"horizontal directional drilling compound" means a secure construction site associated with the connection works where horizontal directional drilling is proposed including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, wheel washing facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

"horizontal directional drilling exit compound" means a secure construction site associated with the connection works at the exit point where horizontal directional drilling is proposed including hard standings, lay down and storage areas for construction materials and equipment, areas for temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

"IBGS (Inward Battered Guide Structure) foundation" means a jacket-type concrete, steel or steel and concrete structure which is pre-fabricated with three tubular raking legs, which is installed over a pre-driven central pile, with up to three smaller diameter raking piles driven through the legs to pin the foundation to the seabed, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

"important hedgerow plan" means the plan certified as the important hedgerow plan by the decision-maker for the purposes of this Order;

"jacket foundation" means a jacket/lattice type structure constructed of concrete, steel or steel and concrete which is fixed to the seabed at three or more points with driven or pre-installed piles or suction cans, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

"land plan" means the plan certified as the land plan by the decision-maker for the purposes of this Order;

"LAT" means lowest astronomical tide;

"maintain" includes inspect, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works and any component part of any wind turbine generator or offshore substation described in Part 1 of **Schedule 1** (authorised development) to the extent assessed in the environmental statement; and "maintenance" shall be construed accordingly;

"MCA" means the Maritime and Coastguard Agency;

"mean low water springs" or "MLWS" means the lowest level which spring tides reach on average over a period of time;

"mean high water springs" or "MHWS" means the highest level which spring tides reach on average over a period of time;

"measures of success for discharge of requirements" means the document certified as the measures of success for discharge of requirements by the decision-maker for the purposes of this Order;

Comment [14]: ExA insertion to follow logical alphabetical order

"MMO" means the Marine Management Organisation;

"monopile foundation" means a steel, concrete, or steel and concrete large diameter pile, typically cylindrical, driven and/or drilled into the seabed, including associated scour protection, transition piece, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

"offshore substation" means an offshore platform constructed of steel or concrete or steel and concrete with single or multiple decks housing major electrical equipment including high voltage transformers, switchgear, control rooms, cabling and busbars, lightning protection masts, communications masts, cable management, back-up generators, fuel storage, emergency accommodation, workshops and stores, helihoist facilities, cranes and other associated electrical and ancillary equipment;

"onshore substation" means an onshore substation facility accommodated within a compound containing electrical equipment including high voltage transformers, switchgear, reactive compensation equipment, harmonic filters, cables, lightning protection masts, control buildings, communications masts, back-up generators, fuel storage, access roads, car parking and hardstanding, fencing and other associated equipment and structures;

"onshore substation design and access statement" means the document certified as the onshore substation design and access statement for the purposes of this Order;

"open access land plan" means the plans certified as the open access land plan by the decision-maker for the purposes of this Order;

"Order land" means the land shown on the land plan which is within the limits of land to be acquired or used and described in the book of reference;

"Order limits" means the limits shown on the works plan within which the authorised project may be carried out, whose grid coordinates seaward of MHWS are set out in paragraph 2 of Part 1 of **Schedule 1** (authorised development) of this Order;

"outline arboricultural method statement" means the document certified as the outline arboricultural method statement for the purposes of this Order;

"outline cable burial plan" means the document certified as the outline cable burial plan for the purposes of this Order;

"outline construction and environmental management plan" means the document certified as the outline construction environmental management plan for the purposes of this Order;

"outline construction traffic management plan" means the document certified as the outline construction traffic management plan for the purposes of this Order;

"outline diver mitigation plan" means the document certified as the outline diver mitigation plan for the purposes of this Order;

"outline ecological and landscape management plan" means the document certified as the outline ecological and landscape management plan for the purposes of this Order;

"outline employment and training plan" means the document certified as the outline employment and training place for the purposes of this Order;

Comment [15]: To secure compliance with new requirement 8

"outline fisheries engagement plan" means the document certified as the outline fisheries engagement plan for the purposes of this Order;

"outline hedgerows management plan" means the document certified as the outline hedgerows management plan for the purposes of this Order;

"outline construction noise management plan" means the document certified as the outline construction noise management plan for the purposes of this Order;

"outline offshore written scheme of archaeological investigation" means the document certified as the outline offshore written scheme of archaeological investigation by the decision-maker for the purposes of this Order;

"outline onshore written scheme of archaeological investigation" means the document certified as the outline onshore written scheme of archaeological investigation by the decision-maker for the purposes of this Order;

"outline scour protection management and cable armouring plan" means the document certified as the outline scour protection management and cable armouring plan by the decision-maker for the purposes of this Order;

"owner", in relation to land, has the same meaning as in Section 7 of the Acquisition of Land Act 1981(a);

"piling restrictions plan" means the plan certified as the piling restrictions plan by the decision-maker for the purposes of this Order;

"public rights of way strategy" means the document certified as the public rights of way strategy for the purposes of this Order;

"public rights of way temporary closure plan" means the plan certified as the public rights of way temporary closure plan by the decision-maker for the purposes of this Order;

"relevant highway authority" means West Sussex County Council;

"relevant planning authority" means the authority as specified in requirements 17 to 40, being West Sussex County Council, the South Downs National Park Authority or Mid Sussex District Council;

"requirements" means those matters set out in Part 3 of **Schedule 1** (requirements) to this Order;

"statutory undertaker" means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"~~suction can~~" means a steel cylindrical structure which is fixed to the base of the foundation and partially penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

"suction caisson foundation" means a large diameter steel cylindrical structure which partially penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential, attached to a vertical central column which supports the transition piece, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access platform(s) and equipment;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

"transition pit" means an underground pit where the offshore export cables comprised in Work No. 3A are jointed to the connection works;

"tree protection order plan" means the plans certified as the tree protection order plan by the decision-maker for the purposes of this Order;

"Trinity House" means The Corporation of Trinity House of Deptford Strond;

"tripod foundation" means a steel or concrete or steel and concrete jacket/lattice type structure consisting of three main legs linked by cross-braces supporting a single central support for the transition piece which is fixed to the seabed with driven or pre-installed piles or suction cans, including associated scour

Comment [16]: ExA deleted to follow logical alphabetical order

Deleted: "measures of success for discharge of requirements" means the document certified as the measures of success for discharge of requirements by the decision-maker for the purposes of this Order; ¶

(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

"UK Hydrographic Office" means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

"undertaker" means E.ON Climate & Renewables UK Rampion Offshore Wind Limited;

"vessel" includes every description of vessel, however propelled or moved, and includes a jack-up barge, floating crane, non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

"watercourse" includes all rivers, streams, ditches, drains, creeks, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

"wind turbine generator" or "WTG" means a structure comprising a tower, rotor with three horizontal axis blades connected at the hub, nacelle containing mechanical and electrical equipment, ancillary equipment including access ladders and platforms, lifts, cables, corrosion protection systems, maintenance equipment, helihoist facilities and other associated equipment, fixed to a foundation;

"working width" means the construction width of the onshore cable corridor including haul route, spoil storage and temporary drainage during installation of circuits and/or cable ducts; and

"works plan" means the plan certified as the works plan by the decision-maker for the purposes of the Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate, save in respect of the parameters referred to requirements 3 to 6 and 18 in Part 3, **Schedule 1** (requirements), conditions 1 to 4 in Part 2, **Schedule 13** (deemed licence under the Marine and Coastal Access Act 2009 – array) and condition 3 in Part 2, **Schedule 14** (deemed licence under the Marine and Coastal Access Act 2009 – export cables).

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(5) Unless otherwise stated, references in this Order to points identified by letters are to be construed as references to the points so lettered on the works plan.

(6) The expression "includes" shall be construed without limitation.

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Subject to the requirements, Work Nos. 1 to 3A shall be constructed anywhere within the Order limits seaward of MHWS and Work Nos. 3B to 32 shall be constructed anywhere within the Order limits landward of MLWS.

Power to maintain authorised project

4. The undertaker may, at any time maintain the authorised project, except to the extent that this Order or an agreement made under this Order provides otherwise.

Operation of electricity generating station

5.—(1) The undertaker is hereby authorised to operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

Requirements, Appeals, etc.

6.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Benefit of the Order

7.—(1) Subject to the provisions of this article, the undertaker may with the consent of the Secretary of State—

- (a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in (3) below) and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in (3) below) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (6), shall include references to the transferee or lessee.

(3) The undertaker may with the written consent of the MMO—

- (a) where an agreement has been made in accordance with paragraph 1(a), transfer to the transferee the whole of the deemed array marine licence and/or the whole of the deemed export cable marine licence and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) where an agreement has been made in accordance with paragraph 1(b), grant to the lessee, for the duration of the period mentioned in paragraph 1(b), the whole of the deemed array marine licence and/or the whole of the deemed export cable marine licence and such related statutory rights as may be so agreed.

(4) Where the undertaker has transferred any benefit and/or a deemed marine licence, or for the duration of any period during which the undertaker has granted any benefit and/or a deemed marine licence under paragraph (1) or (3)—

- (a) the benefit and/or a deemed marine licence transferred or granted ("the transferred benefit") shall include any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit shall reside exclusively with the transferee, and the transferred benefit shall not be enforceable against the undertaker save in the case of a deemed marine licence transferred or granted in respect of any breach of an obligation by the undertaker which occurs prior to such transfer or grant or which occurs as a result of any activity carried out by the undertaker on behalf of the transferee.

(c) the transferred benefit shall be enforceable against the lessee and the undertaker.

(5) The provisions of **article 15** (street works), **article 16** (temporary stopping up of streets), **article 23** (compulsory acquisition of land), **article 25** (compulsory acquisition of rights), **article 31** (temporary use of land for carrying out the authorised project) and **article 32** (temporary use of land for maintaining the authorised project) shall have effect only for the benefit of the named undertaker and a person who is a transferee or lessee and is also—

- (a) in respect of Works No. 3B to 32 a person who holds a licence under the Electricity Act 1989, or

Deleted: or, as the case may be, the lessee

Comment [17]: To ensure clarity in terms of responsibilities for enforcement liabilities in the event of a grant of lease where the undertaker retains an interest and to cater for a variety of possible commercial relationships between the undertaker/transferee and any lessee.

(b) in respect of functions under **article 15** (street works) relating to a street, a street authority.

(6) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) or (3) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Application and modification of legislative provisions

8. Regulation 6 of the Hedgerows Regulations 1997(a) shall be modified so as to read for the purposes of this Order only as if there were inserted after Regulation (1)(j) the following:

"(k) or for carrying out development which has been authorised by a development consent pursuant to the Planning Act 2008."

Public rights of navigation

9.—(1) Subject to paragraph (2), the rights of navigation over the places in the sea where any of the wind turbine generators and offshore substations, including their foundations, are located within territorial waters, shall be extinguished.

(2) The extinguishment of the rights of navigation over the places identified in paragraph (1) shall take effect 14 days after the undertaker has submitted a plan to the Secretary of State showing the precise locations of the foundations of each of any relevant wind turbine generators and offshore substations to be constructed as part of the authorised development within territorial waters.

(3) In respect of the location of any individual wind turbine generator or offshore substation, paragraph (1) shall cease to have effect as soon as that wind turbine generator or offshore substation has been decommissioned and permanently removed, and the relevant rights of navigation shall resume.

(4) The plan submitted in accordance with paragraph (2) shall be published by the undertaker as required by the Secretary of State.

Abatement of works abandoned or decayed

10.—(1) Where the array or any part of it is abandoned or allowed to fall into decay the Secretary of State may by notice in writing require the undertaker at its own expense either to repair and restore or remove the array or any relevant part, and restore the site of the relevant part to a safe and proper condition, within an area and to such an extent as may be specified in the notice.

(2) In circumstances where the undertaker is required to remove the array, without prejudice to any obligations on the undertaker deriving from any notice served under section 105(2) of the 2004 Act, the notice may also require the restoration of the site of the relevant part of the array to a safe and proper condition within such area and to such an extent as may be specified in the notice.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; and any expenditure incurred by the Secretary of State in doing so shall be recoverable from the undertaker.

Deemed marine licences under the Marine and Coastal Access Act 2009

11. The undertaker is granted deemed licences under Part 4 Chapter 1 of the 2009 Act to carry out the works and make the deposits specified in Part 1 of **Schedule 13** (deemed licence under Marine and Coastal Access Act 2009 – array) and **Schedule 14** (deemed licence under Marine and Coastal Access Act 2009 – export cables), subject to the conditions set out in Part 2 of those Schedules.

Saving for Trinity House

12. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown Rights

13.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker—

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
 - (i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
 - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

Defence to proceedings in respect of statutory nuisance

14.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise to be agreed with West Sussex County Council under **requirement 37** (control of noise during operational phase) in Part 3 of **Schedule 1** (requirements); or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised project.

(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

Street works

15.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in **Schedule 2** (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus under the street;
- (d) maintain apparatus under the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article "apparatus" has the same meaning as in Part 3 of the 1991 Act.

Temporary stopping up of streets

16.—(1) Subject to paragraphs (2) and (3), the undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street within the Order limits and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) The undertaker shall not temporarily stop up, alter or divert any street without the consent of the street authority which may attach reasonable conditions to any consent.

(4) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Public rights of way

17.—(1) Subject to paragraph (2), the undertaker may, in connection with the carrying out of the authorised project, extinguish the section of the public right of way (being a footpath) specified in columns (2) to (3) of **Schedule 3** (footpath to be permanently stopped up) to the extent specified in column (4), by reference to the letters shown on the footpath stopping up and diversion plan.

(2) The public right of way specified in paragraph (1) shall not be extinguished under this article unless the new footpath specified on the footpath stopping up and diversion plan is first provided by the undertaker, to the reasonable satisfaction of the relevant highway authority.

(3) The undertaker may, in connection with the carrying out of the authorised project temporarily stop up each of the public rights of way specified in columns (2) of **Schedule 4** (rights of way to be temporarily stopped up) to the extent specified in column (3), by reference to the letters shown on the public rights of way temporary closure plan.

Access to works

18. The undertaker may, for the purposes of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of **Schedule 5** (access to works); and
- (b) with the approval of West Sussex County Council in consultation with the Highways Agency in relation to trunk roads, form and lay out such other means of access or improve existing means of

access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

Agreements with street authorities

19.—(1) A street authority and the undertaker may enter into agreements with respect to:

- (a) any temporary stopping up, alteration or diversion of a street authorised by this Order; or
 - (b) the carrying out in the street of any of the works referred to in **article 15(1)** (street works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Discharge of water

20.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker shall not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river without the prior consent of the Environment Agency.

(6) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(b).

(8) In this article—

- (a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991, have the same meaning as in that Act.

(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37), and amended by section 32 of, and paragraph 16(2) of Schedule 3 to, the Flood and Water Management Act 2010 (date in force to be appointed see section 49(3)(h)(i)). There are other amendments to this section which are not relevant to this Order.

(b) S.I. 2010/675, as amended by the Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (SI 2011/2043), the Environmental Permitting (England and Wales) (Amendment No. 2) Regulations 2011 (SI 2011/2933), the Environmental Permitting (England and Wales) (Amendment) Regulations 2012 (SI 2012/630), the Controlled Waste (England and Wales) Regulations 2012 (S.I. 2012/811).

Authority to survey and investigate the land

21.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) shall, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

but such consent shall not be unreasonably withheld

(5) As soon as practicable following the exercise of any powers under paragraph (1), any apparatus or equipment shall be removed and the land shall be restored to the reasonable satisfaction of the owners of the land.

(6) The undertaker shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Temporary suspension of public access to Access Land

22.—(1) The undertaker may, in connection with the authorised project temporarily—

- (a) interfere with such parts of the access land as are affected by the authorised project by constructing or maintaining the connection works as the undertaker considers necessary or expedient; and
- (b) close to the public the relevant parts of the access land as are affected by the authorised project during construction or maintenance of the connection works.

(2) No fewer than 28 days before exercising any power under paragraph (1), the undertaker shall notify the South Downs National Park Authority of its intention to exercise such powers.

(3) During the period of any closure referred to in paragraph (1)(b), all rights of access to the public shall be suspended.

(4) The power conferred by paragraph (1) shall be exercised in a way which secures—

- (a) that no more of the relevant part of the access land is closed to the public at any time than is necessary in the circumstances; and
- (b) that all reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction or interference is caused to the public which may be intending to use the part so closed.

(5) As soon as practicable following the exercise of any powers under paragraph (1), any temporary works plant, machinery and fencing shall be removed and access to the access land shall be restored.

Compulsory acquisition of land

23.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project or to facilitate, or is incidental to, it.

(2) This article is subject to paragraph (2) of **article 25** (compulsory acquisition of rights) and paragraph (8) of **article 31** (temporary use of land for carrying out the authorised project).

Time limit for exercise of authority to acquire land compulsorily

24.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the 1981 Act as applied by article 30 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by **article 31** (temporary use of land for carrying out the authorised project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

25.—(1) The undertaker may acquire compulsorily such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under **article 23** (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this article, **article 26** (private rights), **article 31** (temporary use of land for carrying out the authorised project), **article 32** (temporary use of land for maintaining authorised project) and **article 33** (statutory undertakers), in the case of the Order land specified in column (1) of **Schedule 7** (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights or the imposition of restrictive covenants affecting the land for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act, as substituted by paragraph 5 of **Schedule 8** (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires an existing right or restrictive covenant over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

(4) **Schedule 8** (modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants) shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

Private rights

26.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this article (and including those lands included in column (1) of **Schedule 7** (land in which only new rights etc. may be acquired)) shall be extinguished in so far as their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of the acquisition of the right by the undertaker, whether compulsorily or by agreement; or
 - (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),
- whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right under this article shall be entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or **article 33** (statutory undertakers) applies.

(6) Paragraphs (1) to (3) shall have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's entry onto it; or
 - (iii) the undertaker's taking temporary possession of it,that any or all of those paragraphs shall not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
 - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,
- it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

27.—(1) The 1981 Act shall apply as if this Order were a compulsory purchase order.

(2) The 1981 Act, as so applied, shall have effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—

"(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated."

(4) In that section, in subsection (2), for "(1)(b)" there shall be substituted "(1)" and after "given" there shall be inserted "and published".

(5) In that section, for subsections (5) and (6) there shall be substituted—

"(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month."

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after "publication" there shall be inserted "in a local newspaper circulating in the area in which the land is situated"; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words "(as modified by section 4 of the Acquisition of Land Act 1981)" shall be omitted.

(8) References to the 1965 Act in the 1981 Act shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

28.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of **article 23** (compulsory acquisition of land) or **article 25** (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of the land under paragraph (1), the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent **article 29** (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

29.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person ("the owner") under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden ("the land subject to the notice to treat"); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole ("the land subject to the counter-notice").

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

30.—(1) The undertaker may enter on and appropriate so much of the subsoil of any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil for those purposes or any other purpose ancillary to the authorised project.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) shall not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised project

31.—(1) The undertaker may, in connection with the carrying out of the authorised project—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of **Schedule 9** (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a working site with access to the working site in connection with the authorised development; and
- (e) construct any works, or to use the land, as specified in relation to that land in column 3 of **Schedule 9** (land of which temporary possession may be taken), or any mitigation works.

(2) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of **Schedule 9** (land of which temporary possession may be taken) unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

(5) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Nothing in this article shall affect any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker shall not be precluded from—

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under **article 25** (compulsory acquisition of rights); or
- (b) acquire any part of the subsoil (or rights in the subsoil) of that land under **article 28** (acquisition of subsoil only).

(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised project

32.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) Nothing in this article shall affect any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article "the maintenance period", in relation to any part of the authorised project, means the period of 5 years beginning with the date on which that part of the authorised project first exports electricity to the national electricity transmission network.

Statutory undertakers

33. Subject to the provisions of **Schedule 12** (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish or relocate the rights of, or remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Recovery of costs of new connections

34.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under **article 33** (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under **article 33** (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article shall not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this paragraph—

"public communications provider" has the same meaning as in section 151(1) of the Communications Act 2003; and

"public utility undertaker" has the same meaning as in the 1980 Act.

Application of landlord and tenant law

35.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

36. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Felling or lopping of trees and removal of hedgerows

37.—(1) Subject to **requirement 31** (ecological and landscape management plan), **requirement 31A** (ecological and landscape management plan for the South Downs National Park), **requirement 38** (European protected species onshore) and **requirement 38A** (European protected species within the South Downs National Park), the undertaker may fell or lop any tree or shrub within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised project –

- (a) subject to paragraph (2) above, remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised project; and
- (b) remove the important hedgerows as are within the Order limits and specified in **Schedule 10** (important hedgerows).

(5) In this article "hedgerow" and "important hedgerow" have the same meaning as in the Hedgerow Regulations 1997.

Trees subject to tree preservation orders

38.—(1) Subject to **requirement 31** (ecological and landscape management plan), **requirement 31A** (ecological and landscape management plan for the South Downs National Park), **requirement 38** (European protected species onshore) and **requirement 38A** (European protected species within the South Downs National Park), the undertaker may fell or lop any tree described in **Schedule 11** (trees subject to tree preservation orders) and identified on the tree preservation order plan, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Procedure in relation to further approvals, etc.

39.—(1) In this article—

"plans" includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

(2) Where an application is made to the relevant planning authority, a highway authority, a street authority, a traffic authority or the owner of a sewer or drain for any consent, agreement or approval required under any of the provisions of this Order such application shall, where appropriate, conform to the objective standard as set out in the measures of success for discharge of requirements and shall be accompanied by proper and sufficient plans of the proposal and such consent, agreement or approval shall, if given, be in writing and may be given subject to such reasonable terms and conditions as the authority or owner may require and shall not be unreasonably withheld.

(3) If, within 56 days after the application has been submitted to the authority or owner (or such extended period as shall be agreed with the undertaker in the event that the authority shall request further information) in accordance with this article, it has not intimated its disapproval and the grounds of disapproval, the authority or owner shall be deemed to have approved the content of the application. An exception to this provision shall be made in the case of any application that is assessed by the relevant authority as requiring an appropriate assessment under the UK Habitats Regulations.

(4) In the event of any refusal or disapproval by the authority or owner, the undertaker may resubmit a revised application, or revised plans in support of the original application, and, in that event, if the authority or owner has not intimated its refusal or disapproval and the grounds of refusal or disapproval within 56 days of the revised application or of revised plans being submitted, it shall be deemed to have given its consent or agreement to, or its approval of, the revised application or plans. An exception to this provision shall be made in the case of any application that is assessed by the relevant authority as requiring an appropriate assessment under the UK Habitats Regulations.

Comment [18]: NE in the oral representation following the ISH on DCO and DML on 5 and 6 December stated that NE would look to be excluded from the deemed approval mechanism

Comment [19]: NE in the oral representation following the ISH on DCO and DML on 5 and 6 December stated that NE would look to be excluded from the deemed approval mechanism

(5) The undertaker shall not carry out the proposal until such application or plans have been approved (or deemed to have been approved) or settled by arbitration.

(6) The relevant planning authority shall be entitled to make a reasonable charge for any application for consent, agreement or approval pursuant to paragraph (2).

Certification of plans etc.

40.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

- (a) the works plan; document reference...dated..
- (b) the land plan; document reference...dated..
- (c) the public rights of way temporary closure plan; document reference...dated..
- (d) the footpath stopping up and diversion plan; document reference...dated..
- (e) the open access land plan; document reference...dated..
- (f) the important hedgerows plan; document reference...dated..
- (g) the tree protection order plan; document reference...dated..
- (h) the access to works plan; document reference...dated..
- (i) the piling restriction plan; document reference...dated..
- (j) the book of reference; document reference...dated..
- (k) the environmental statement;
- (l) the outline onshore written scheme of archaeological investigation;
- (m) the outline offshore written scheme(s) of archaeological investigation;
- (n) the outline construction traffic management plan;
- (o) the outline ecological and landscape management plan;
- (p) the onshore substation design and access statement; document reference...dated..
- (q) the public rights of way strategy; document reference...dated..
- (r) the outline construction and environmental management plan;
- (s) the outline construction noise management plan;
- (t) the outline diver mitigation plan;
- (u) the outline arboricultural method statement;
- (v) the outline hedgerows management plan;
- (w) the outline scour protection management and cable armouring plan;
- (x) the outline Tottington Mount management plan;
- (y) the outline cable burial plan;
- (z) the outline fisheries engagement plan;
- (aa) measures of success for discharge of requirements, document reference...dated..
- (ab) the outline training and employment plan
- (ac) design principles supplementary document

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Comment [I10]: Action point 9 from DCO hearing on 5 December 2013 requested that all relevant plans and documents for certification are listed including those listed at paragraph 17 of the summary to E.ON’s answers to Deadline IX. E.ON was also asked to check that where possible the plans and documents listed for certification are referenced back to Article 40. The applicant is requested to update this list of documents and check that where possible these documents are referenced back to this article’.

Comment [I11]: The applicant is requested to insert the most recent document references and dates in sub-paragraph (1) (a) to (j),(p),(q) and (aa)

Comment [I12]: This to be discussed with IPs and submitted by the applicant by Deadline XII

Comment [I13]: To secure compliance with proposed new Requirement 1

Protective provisions

41. **Schedule 12** (protective provisions) shall have effect.

Arbitration

42. Any difference or dispute under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the decision-maker.

Signed by authority of the Secretary of State for Energy and Climate Change

[Address]
[Date] 201[X]

[Name]
Head of [Unit]
Department for Energy and Climate Change

SCHEDULES

SCHEDULE 1

Article 3

Authorised Project

Part 1

Authorised Development

1. A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act on the bed of the English Channel approximately 13 km from the Sussex coast, comprising:

Work No. 1

- (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 700 MW comprising up to 175 wind turbine generators each fixed to the seabed by one of six foundation types (namely, monopile foundation, tripod foundation, jacket foundation, IBGS foundation, gravity base foundation or suction caisson foundation), fitted with rotating blades and situated within the area hatched red on the works plan and further comprising (b) below;
- (b) a network of cables laid underground within the area hatched red on the works plan between the WTGs and Work No. 2, for the transmission of electricity and electronic communications between these different structures and including one or more cable crossings;

and associated development within the meaning of section 115(2) of the 2008 Act comprising:

Work No. 2 – Up to two offshore substations fixed to the seabed by one of three foundation types (namely monopile foundation, gravity base foundation or jacket foundation) and situated within the area hatched red on the works plan;

Work No. 3A – A connection or connections between the offshore substations comprising Work No. 2 and between Work No. 2 and Work No. 3B consisting of up to four cables laid underground along routes within the Order limits seaward of MHWS including one or more cable crossings;

In the county of West Sussex, Worthing Borough

Work No. 3B – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground from mean low water springs east of Worthing under the A259 Brighton Road to Work No. 7;

Work No. 4 – A new temporary vehicular access track running in a southwest – northeast direction on the southern side of the A259 Brighton Road from Work No. 3B to join the A259 Brighton Road at the southern side of the junction between the A259 Brighton Road and Western Road, Worthing together with modifications to the junction of the new vehicular temporary access track and the adopted highway at the A259 Brighton Road;

Work No. 5 – vehicular access from the A259 Brighton Road to Work No. 6;

Work No. 6 – A new temporary construction compound and a temporary access track to Work No. 7;

Work No. 7 – Onshore connection works consisting of up to four circuits and associated telecommunication cables with up to four transition pits located within the Brooklands Pleasure Park, with associated cables, connecting Work No. 3B to Work No. 8 together with new temporary horizontal directional drilling compounds;

Work No. 8 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-westerly direction through the Brooklands Pleasure Park from Work No. 7 to Work No. 9;

Work No. 9 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-westerly direction from Work No. 8 to Work No. 11 together with new temporary horizontal directional drilling compounds;

Work No. 10 – A new temporary vehicular access track running in an east-west direction from Work No. 9 to join St. Pauls Avenue together with modifications to the junction of the new temporary vehicular access track and the highway at St. Pauls Avenue;

In the county of West Sussex, District of Adur

Work No. 11 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-westerly direction from Work No. 9 to Work No. 12 and passing under the Brighton to Worthing South Coast railway line together with new temporary horizontal directional drilling compounds;

Work No. 12 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-westerly direction from Work No. 11 to Work No. 13;

In the county of West Sussex, Worthing Borough

Work No. 13 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-westerly direction from Work No. 12 to Work No. 14 and crossing under Upper Brighton Road together with new temporary horizontal directional drilling compounds;

Work No. 14 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally northerly direction from Work No. 13 to Work No. 15 and crossing under the A27 trunk road together with new temporary horizontal directional drilling compounds;

Work No. 15 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-westerly direction together with a new temporary horizontal directional drilling exit compound and then in a generally north-easterly direction from Work No. 14 to Work No. 16 and crossing under Lambleys Lane;

In the county of West Sussex, District of Adur

Work No. 16 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-easterly direction from Work No. 15 to Work No. 17 and crossing under Titch Hill;

Work No. 17 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally easterly direction from Work No. 16 to Work No. 18 and crossing under Coombes Road;

Work No. 18 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-easterly direction from Work No. 17 to Work No. 19 and passing under the River Adur, the Downs Link and the A283 Steyning Road together with new temporary horizontal directional drilling compounds;

Work No. 19 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-easterly direction from Work No. 18 to Work No. 20 together with a new temporary horizontal directional drilling exit compound;

In the county of West Sussex, District of Horsham

Work No. 20 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-easterly direction from Work No. 19 to Work No. 21 and crossing under Mill Hill, an unnamed road at Beeding Hill and the South Downs Way;

Work No. 21 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally westerly then easterly direction from Work No. 20 to Work No. 22 and crossing under a Bronze Age cross-dyke at Tottington Mount and Edburton Road together with a new temporary construction compound south of Tottington Manor;

Work No. 22 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally northerly direction from Work No. 21 to Work No. 23 and crossing under an unnamed road, Horn Lane and the A281 Brighton Road;

Work No. 23 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-easterly direction from Work No. 22 to Work No. 24 and crossing under the B2116 Henfield Road;

In the county of West Sussex, District of Mid Sussex

Work No. 24 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally northerly direction from Work No. 23 to Work No. 25 crossing under Bob Lane;

Work No. 25 – A new onshore substation to the north-east of the existing National Grid Bolney substation;

Work No. 26 – Temporary widening of an existing vehicular access track from Bob Lane to Work No. 25 together with upgrades to the existing access track and modifications to the junction of the existing access track and the highway at Bob Lane;

Work No. 27 – Landscaping works including planting;

Work No. 28 – A new permanent public footpath;

Work No. 29 – A new temporary construction compound together with new construction access from Work No. 32 to Work No. 25 and permanent access to Work No. 30 and landscaping works including planting;

Work No. 30 – Landscaping works including planting;

Work No. 31 – A grid connection consisting of up to four circuits and associated telecommunication cables laid underground from the new onshore substation within Work No. 25 and continuing towards a connection point at the existing National Grid Bolney substation;

Work No. 32 – A new construction access running in a southeast – northwest direction from Work No. 29 to join Wineham Lane together with modifications to the junction of the new construction access and the highway at Wineham Lane.

and in connection with such Work Nos. 1 to 3A and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the work assessed by the environmental statement and the deemed marine licences;

and in connection with such Works 3B to 32 and to the extent that they do not otherwise form part of any such work, further associated development shown on the plans referred to in the requirements, or approved pursuant to the requirements, including:

- (a) ramps, means of access and footpaths;
- (b) bunds, embankments, swales, landscaping and boundary treatments;
- (c) habitat creation;
- (d) jointing bays, manholes, marker posts and other works associated with cable laying;
- (e) water supply works, foul drainage provision, surface water management systems and culverting;

- (f) construction lay down areas and compounds and their restoration;
- (g) such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project;
- and which fall within the scope of the works assessed by the environmental statement.

2. The grid coordinates for that part of the authorised development which is seaward of MHWS are specified below:

Coordinates for the Order limits seaward of MHWS

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
<i>1</i>	50 41 11.353 N	0 21 55.854 W	<i>10</i>	50 45 18.565 N	0 19 44.382 W
<i>2</i>	50 42 24.826 N	0 13 45.700 W	<i>11</i>	50 48 30.636 N	0 20 55.626 W
<i>3</i>	50 40 39.194 N	0 04 26.227 W	<i>12</i>	50 48 46.775 N	0 20 10.230 W
<i>4</i>	50 39 31.712 N	0 01 28.060 W	<i>13</i>	50 48 57.172 N	0 20 16.314 W
<i>5</i>	50 38 34.922 N	0 09 02.884 W	<i>14</i>	50 49 03.572 N	0 19 54.019 W
<i>6</i>	50 37 08.170 N	0 15 42.138 W	<i>15</i>	50 48 55.616 N	0 19 44.170 W
<i>7</i>	50 38 13.351 N	0 16 17.087 W	<i>16</i>	50 49 05.768 N	0 18 57.100 W
<i>8</i>	50 37 03.353 N	0 20 36.092 W	<i>17</i>	50 45 11.462 N	0 14 39.325 W
<i>9</i>	50 41 23.104 N	0 20 37.738 W	<i>18</i>	50 41 42.907 N	0 10 03.133 W

Part 2

Ancillary Works

Works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising:

- (a) temporary landing places or other means of accommodating vessels in the construction and/or maintenance of the authorised development;
- (b) buoys, beacons, fenders and other navigational warning or ship impact protection works; and
- (c) temporary works for the benefit or protection of land or structures affected by the authorised development.

Part 3

Requirements

Time limits

1. The authorised development shall commence no later than the expiration of five years beginning with the date this Order comes into force or such longer period as the Secretary of State may hereafter direct in writing.

Design Principles

2. The undertaker shall have regard to the design principles set out in the Design Principles Supplementary Document certified by the Order and incorporate these principles into the proposed layout and location and choice of all WTGs, where reasonably practicable in view of other constraints such as ecological effects, safety reasons or engineering and design parameters.

Detailed offshore design parameters

3.—(1) Subject to paragraph (2), no wind turbine generator forming part of the authorised development shall—

- (a) exceed a height of 210 metres when measured from LAT to the tip of the vertical blade;
- (b) exceed a height of 124 metres when measured from LAT to the height of the centreline of the generator shaft forming part of the hub;
- (c) exceed a rotor diameter of 172 metres;
- (d) be less than 600 metres from the nearest WTG in either direction perpendicular to the approximate prevailing wind direction (crosswind) or be less than 600 metres from the nearest WTG in either direction which is in line with the approximate prevailing wind direction (downwind);
- (e) have a distance of less than 22 metres between the lowest point of the rotating blade of the wind turbine and MHWS.

(2) References to the location of a wind turbine generator are references to the centre point of the tower of that WTG.

(3) The layout of all wind turbine generators and offshore substations within the Order limits shall comprise an overall contiguous arrangement of offshore structures. Within such overall contiguous arrangement there shall be no more than three contiguous groupings each comprising wind turbine generators of a similar size and each such grouping shall be laid out in a regular pattern such that along each row axis within the grouping there is an approximately equal distance between wind turbine generators.

(4) For the purposes of this requirement, "similar size" means a wind turbine with a difference in rotor diameter of less than 15%.

(5) No wind turbine generator or offshore substation forming part of the authorised scheme shall be erected within the area hatched black on the works plan (the "exclusion zone for wind turbine generators and offshore substations"), whose coordinates are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
50 40 55.069 N	000 05 50.015 W	50 40 55.069 N
50 40 39.195 N	000 04 26.231 W	50 40 39.195 N
50 39 31.715 N	000 01 28.063 W	50 39 31.715 N
50 38 35.394 N	000 08 59.148 W	50 38 35.394 N

4.—(1) The total number of offshore substations forming part of the authorised development shall not exceed two.

Comment [I14]: The layout has been changes to reflect the new requirement

Comment [I15]: Representations received from Natural England and E.ON in response to Deadline XI suggests that there is agreement with the principle of including either a new requirement, or an amendment to Condition 8 (a)(1) Schedule 13.

However NE and E.ON are not currently agreed as to the best method for including this, or the wording.

In view of the remaining differences between the parties, the ExA proposes a new Requirement – Requirement 1 and an amended Condition 8 (a)(i) in Schedule 13.

This would refer to a supplementary document. This would outline the design principles that the applicant needs to have regard to when designing the layout of the proposed array, so that the visual effects are limited as far as reasonably practicable, taking into account other constraints such as ecological effects, safety reasons or engineering or design parameters.

In relation to the supplementary document, to secure compliance with it, it has been included in Article 40 and in Article 2.

Comments are invited from the applicant and IPs.

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1. [Not used]¶

Time limits¶

2. The authorised development shall commence no later than the expiration of five years beginning with the date this Order comes into force or such longer period as the Secretary of State may hereafter direct in writing.¶

(2) The dimensions of any offshore substation forming part of the authorised development (excluding masts) shall not exceed 45 metres in height when measured from LAT, 45 metres in length and 45 metres in width.

(3) Each offshore substation shall have no more than one supporting foundation.

5.—(1) The total length of the cables comprising Work No.3A shall not exceed 92 kilometres.

(2) The total length of the cables comprising Work No. 1(b) shall not exceed 230 kilometres.

(3) The total amount of cable protection for the cables comprising Work No. 3A shall not exceed 0.092km².

(4) The total amount of cable protection for the cables comprising Work No. 1(b) shall not exceed 0.23km².

(5) No export cables forming part of the authorised development shall be located within the area hatched green on the works plan (the "exclusion zone for export cables"), whose coordinates are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
<i>A-1</i>	50.794617	-0.289684
<i>A-2</i>	50.733185	-0.217759
<i>A-3</i>	50.733212	-0.289783

Comment [I16]: In Requirement 5(3) and (4) the applicant and the MMO are requested to clarify whether limits to such protection material should be expressed in km³ as in other orders

6.—(1) Each monopile foundation forming part of the authorised development shall not have a diameter greater than 6.5 metres.

(2) Each gravity base foundation forming part of the authorised development shall not have—

- (a) a diameter at the level of the seabed which is greater than 34 metres;
- (b) a base height, where there is a flat base, which is greater than 10 metres above the level of the seabed.

(3) Each jacket foundation forming part of the authorised development shall not have—

- (a) a width spacing between each leg at the level of the seabed which is greater than 32 metres;
- (b) a leg diameter which is greater than 2.6 metres;
- (c) a pile diameter which is more than 2.6 metres;
- (d) more than one pile per leg;
- (e) more than four legs.

(4) Each tripod foundation forming part of the authorised development shall not have—

- (a) a pile diameter which is greater than 2.8 metres;
- (b) more than one pile per leg;
- (c) more than three legs;
- (d) a column diameter which is greater than 4.5 metres.

(5) Each suction caisson foundation forming part of the authorised development shall not have—

- (a) a diameter at the level of the seabed which is more than 35 metres;
- (b) a column diameter which is more than 6.5 metres.

(6) Each IBGS foundation forming part of the authorised development shall not have—

- (a) a width spacing between each leg at the level of the seabed which is greater than 26 metres;
- (b) a central pile diameter which is greater than 2.8 metres; and
- (c) a raking pile diameter which is greater than 1.5 metres.

(7) No more than 156 monopile foundations shall be installed as part of the authorised development.

(8) No more than 124 jacket foundations shall be installed as part of the authorised development.

(9) No more than 124 IBGS foundations shall be installed as part of the authorised development.

(10) No more than 165 tripod foundations shall be installed as part of the authorised development.

(11) No more than 80 gravity base foundations shall be installed as part of the authorised development.

(12) No more than 118 suction caisson foundations shall be installed as part of the authorised development.

(13) The total amount of scour protection for the WTGs and offshore substations forming part of the authorised development shall not exceed 831,400 m³.

Base port travel plan

7.—(1) For the purposes of this requirement only—

"local planning authority" and "local highway authority" mean the planning or highway authority or authorities in England or Wales in whose area the relevant port is located;

"selected base port" means a port situated in England or Wales; and

"base port" means the port used by management personnel for construction of the authorised development.

(2) Works Nos. 1, 2 or 3A shall not be commenced until a travel plan for the onshore port-related traffic to and from the selected base port and relating to the authorised development, has been submitted to and approved in writing by the local planning authority in consultation with the local highway authority.

(3) The travel plan must be implemented as approved at all times specified within the travel plan during the construction of the authorised development.

Employment and Training Plan

8. No stage of the connection works shall be commenced until an Employment and Training Plan (which accords with the outline Employment and Training Plan as certified by this order) has been submitted to and approved in writing by West Sussex County Council. The Employment and Training Plan shall accord with the purpose of the Rampion Supply Chain Steering Group to maximise local and regional supply chain opportunities resulting from Rampion.

Comment [I17]: The Applicant is requested to submit an Outline Employment and Training Plan by Deadline X11. Interested Parties including members of the Rampion Supply Chain Steering Group are requested to identify how the Employment and Training Plan will be funded

9. [Not used]

10. [Not used]

11. [Not used]

12. [Not used]

13. [Not used]

14. [Not used]

Lighting

15. The undertaker shall exhibit such lights, with such shape, colour and character as are required by Air Navigation Order 2009, or as directed by the CAA.

Offshore decommissioning

16. No authorised development shall commence until a written decommissioning programme in compliance with [any notice served upon the undertaker by the Secretary of State/the notice dated [•] pursuant to section 105(2) of the 2004 Act] has been submitted to the Secretary of State for approval.

Stages of authorised development onshore

17.—(1) The connection works shall not be commenced until a written scheme setting out the stages of the connection works has been submitted to and approved by West Sussex County Council.

(2) The scheme shall be implemented as approved.

Design approval onshore

18.—(1) No part of Work No. 25 shall commence until details of its layout, design, scale and external appearance have been submitted to and approved in writing by West Sussex County Council. The works comprising Work No. 25 shall be carried out in accordance with the approved details.

(2) Any works approved by West Sussex County Council under paragraph (1) shall accord with the principles ~~contained in the document certified as the onshore substation design and access statement for the purpose of this Order.~~

(3) No building comprised in Work No. 25 shall exceed 6 metres in height above existing ground level and shall not exceed a footprint of 560m².

(4) No external equipment comprised in Work No. 25 shall exceed 10.5 metres in height above existing ground level.

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Comment [I18]: Amendment proposed in the interest of precision and enforceability.

Provision of landscaping

19. The works comprising Work No. 25 shall not commence until a written landscaping scheme and associated work programme (which accords with the principles set out in figure 26.6 of the environmental statement) has been submitted to and approved in writing by West Sussex County Council. The landscaping scheme shall include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planning density of any proposed planting, including any trees;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing ground levels and proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) proposed and existing functional services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports;

~~(h) details of existing trees and hedgerows to be removed and justification for their removal, including evidence to show that removal is the only practicable course of action;~~

~~(i) details of existing trees and hedgerows to be retained with measures for their protection during the construction period;~~

~~(j) retained historic landscape features and proposals for restoration, where relevant;~~

~~(k) implementation timetables for all landscaping works; and~~

~~(l) proposed finished heights, form and gradient of earthworks.~~

Comment [I19]: Included in view of representations received from Twineham Parish Council and other interested parties living in the vicinity of the proposed substation

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Implementation and maintenance of landscaping

20.—(1) All landscaping works in relation to Work No. 25 shall be carried out in accordance with the landscaping scheme approved under requirement 19 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards.

(2) Any tree or shrub planted as part of an approved landscaping scheme in relation to any land landward of MLWS within the Order limits that, within a period of ten years after planting, is removed, dies or becomes, in the opinion of West Sussex County Council or South Downs National Park Authority within the South Downs National Park, seriously damaged or diseased, shall be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

Highway accesses

21.—(1) No stage of the connection works shall commence until written details of the siting, design, degree of permanence and layout of—

- (a) any new permanent means of access to a highway outside the South Downs National Park to be used by vehicular traffic for that stage; or
- (b) any new temporary means of access to a highway to be used by vehicular traffic for that stage; or
- (c) any alteration to an existing means of access to a highway used by vehicular traffic for that stage,

has, in consultation with the Highways Agency in relation to trunk roads, been submitted to and approved by West Sussex County Council.

- (2) The highway accesses shall be constructed in accordance with the approved details.

Permanent highway accesses in the South Downs National Park

21A.—(1) No stage of the connection works within the South Downs National Park shall commence until written details of the siting, design and layout of any new permanent means of access to a highway to be used by vehicular traffic for that stage has, in consultation with the relevant highway authority, been submitted to and approved by South Downs National Park Authority.

- (2) The highway accesses shall be constructed in accordance with the approved details.

Public rights of way

22.—(1) No stage of the connection works shall commence until, for that stage the undertaker has provided to the relevant highway authority for its approval a public rights of way diversion and closure scheme (which accords with the public rights of way strategy submitted with the application) which shall include—

- (a) a programme for the temporary closure and re-opening of the public rights of way specified at **Schedule 4** (public rights of way to be temporarily stopped up), save for the National Trail in the South Downs National Park, comprising—
- (i) a plan for the sequencing of construction of the connection works;
 - (ii) any alternative routes during the temporary closure, including routes within the working width; and
 - (iii) the re-opening of the public rights of way upon the cessation of that part of the authorised development requiring the temporary closure of those rights of way;
- (b) the specification for the new footpath forming part of Footpath 8T specified in **Schedule 3** (footpath to be permanently stopped up).

- (2) The authorised development shall thereafter be carried out in accordance with the approved scheme.

(3) Prior to the commencement of the connection works the undertaker shall provide to the relevant highways authority in consultation with the South Downs National Park Authority a rights of way and access land communication management plan, which shall include—

- (a) proposals for informing the public of the start and duration of the connection works where public rights of way or access land are affected, including signage; and
- (b) details of the proposed diversions and temporary closures to minimise impacts on public rights of way during construction of the connection works.

National Trail in the South Downs National Park

22A.—(1) No stage of the connection works within the South Downs National Park shall commence until the undertaker has provided to the South Downs National Park Authority for its approval a National Trail diversion and closure scheme (which accords with the public rights of way strategy submitted with the application) which shall include a programme for the temporary closure and re-opening of the National Trail, comprising—

- (a) a plan for the sequencing of construction of the connection works;
- (b) any alternative routes during the temporary closure, including routes within the working width; and
- (c) the re-opening of the National Trail upon the cessation of that part of the authorised development requiring the temporary closure of the National Trail.

- (2) The authorised development shall thereafter be carried out in accordance with the approved scheme.

Fencing and means of enclosure

23.—(1) Work No. 25 shall not commence operation until written details of all proposed permanent fences, walls or other means of enclosure for that work have been submitted to and approved by West Sussex County Council.

(2) The permanent fencing, walls or other means of enclosure at Work No. 25 shall be installed as approved.

Temporary fencing in the South Downs National Park

23A.—(1) No stage of the connection works within the South Downs National Park shall commence until written details of all proposed temporary fencing or other means of enclosure for that stage that will be in situ for longer than six months have been submitted to and approved by South Downs National Park Authority.

(2) The temporary fencing or other means of enclosure shall be installed as approved.

(3) Any temporary fencing or other means of enclosure shall be removed on completion of the relevant stage of the connection works.

Surface and foul water drainage

24.—(1) The works comprising Work No. 25 shall not commence until written details of the surface and (if any) foul water drainage system (including means of pollution control) have, after consultation with the relevant sewerage and drainage authorities and the Environment Agency, been submitted to and approved by West Sussex County Council.

(2) The surface and foul water drainage system for Work No. 25 shall be constructed in accordance with the approved details.

Comment [I20]: West Sussex County Council and the Environment Agency are requested to comment on whether a timetable for implementation (as per Requirements 31(3) and 31A(3)) should be provided pursuant to this Requirement.

Contaminated land and groundwater

25. If during the construction of the connection works further contamination not previously identified is found to be present at the site then no further work shall be carried out on that part of the site until a risk assessment has been carried out and the results of the risk assessment have been provided to West Sussex County Council.

Landfill site

26.—(1) No relevant stage of the connection works shall commence until—

- (a) a scheme for the site investigation and risk assessment at the former landfill site at Brooklands Pleasure Park, the location of which is identified on figure 22.4 in the environmental statement, is submitted to and approved by West Sussex County Council in consultation with the Environment Agency and Worthing Borough Council; and
- (b) a landfill management plan to address potential risks identified by the approved scheme in (a) above is submitted to and approved by West Sussex County Council in consultation with the Environment Agency and Worthing Borough Council.

(2) The approved landfill management plan shall thereafter be fully implemented and adhered to throughout the period of the construction of the connection works.

Flood risk

27.—(1) No stage of the connection works may commence until there has been submitted to and approved in writing by West Sussex County Council in consultation with the Environment Agency a scheme for mitigation of flood risk during the construction and operation of the authorised development.

(2) The scheme shall contain in particular:

- (a) provision for stockpiles of excavated materials to be located outside the flood plain where possible, or back from the edges of the watercourse to reduce the risk of silt run-off;
- (b) provision for gaps at intervals in the stockpiles to ensure that floodwater movement is not hindered;
- (c) details regarding offsite disposal of surplus excavated materials;
- (d) details regarding storage of fuel or other hazardous substances outside the flood plain; and
- (e) details regarding reinstatement of the flood plain area to minimise the risk of unprotected topsoil being lost by scour.

(2) The plan approved shall thereafter be fully implemented and adhered to throughout the period of the construction and operation of the authorised development.

Archaeology

28.—(1) No stage of the connection works, including any trial trenching, shall commence outside the South Downs National Park until in relation to the relevant stage of the connection works a written scheme of archaeological investigation (which accords with the outline onshore written scheme of archaeological investigation) has been submitted to and approved in writing by West Sussex County Council.

(2) The written scheme of archaeological investigation shall identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the scheme shall be by a suitably qualified person or body approved by West Sussex County Council.

(4) Any archaeological works or watching brief shall be carried out in accordance with the approved scheme.

Archaeology in the South Downs National Park

28A.—(1) No stage of the connection works, including any trial trenching, shall commence within the South Downs National Park until in relation to the relevant stage of the connection works a written scheme of archaeological investigation (which accords with the outline onshore written scheme of archaeological investigation) has been submitted to and approved in writing by South Downs National Park Authority.

(2) The written scheme of archaeological investigation shall identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the scheme shall be by a suitably qualified person or body approved by South Downs National Park Authority.

(4) Any archaeological works or watching brief shall be carried out in accordance with the approved scheme.

Scheduled monument at Tottington Mount

28B.— (1) No relevant stage of the connection works shall commence until a methodology for those works that affect the Bronze Age cross-dyke scheduled monument at Tottington Mount (the "scheduled monument") has been submitted and approved in writing by English Heritage. The methodology shall form part of the written scheme of archaeological investigation provided pursuant to **requirement 28A** (archaeology in the South Downs National Park). The relevant stage of the works at the scheduled monument shall be carried out in accordance with the approved methodology.

(2) The methodology referred to in paragraph (1) shall include provisions to ensure that equipment and machinery are not used or operated on the scheduled monument in such conditions or in such manner that is likely to result in damage to the monument or to ground disturbance in the vicinity of the scheduled monument, other than is necessary for the construction and installation of that part of the authorised development that affects the scheduled monument.

(3) The undertaker shall provide at least 4 weeks' notice (or such shorter period as may be mutually agreed with English Heritage) of the commencement of the works at the scheduled monument.

(4) The undertaker shall provide access to the works at the scheduled monument to facilitate any inspection that English Heritage considers necessary to inspect the works to ensure compliance with the methodology approved under paragraph (1) above.

(5) The undertaker shall ensure that all agents and contractors involved in the construction works at the scheduled monument are informed of the following—

- (a) the land is designated as a scheduled monument under the Ancient Monuments and Archaeological Areas Act 1979 (as amended); and
- (b) the extent of the land designated as a scheduled monument, as set out in the scheduled monument description and map on the National Heritage List for England.

Construction environmental management plan (CEMP)

29.—(1) No stage of the connection works shall commence until a CEMP, drafted in accordance with the principles set out in the outline construction environmental management plan has been submitted to and approved by West Sussex County Council in consultation with the Environment Agency and, in relation to the soil management plan referred to in paragraph (2)(a) below, Natural England.

(2) The CEMP shall contain in particular—

- (a) a soil management plan which shall include measures for the handling, placing, compaction and management of soil;
- (b) a construction air quality management plan which shall include measures to control fugitive emissions from construction activities and the suppression of dirt and dust;
- (c) an invasive species management plan which shall include the control and removal of invasive weed species;
- (d) a site waste management plan to control the storage, use and disposal of materials during construction;
- (e) measures to monitor and minimise vibration during construction of the connection works;
- (f) proposals for environmental management during operation of Work No. 25; and
- (g) a written scheme to deal with contamination of land including groundwater within the Order limits.

(3) All remediation, construction and commissioning works shall be undertaken in accordance with the approved CEMP.

Watercourse crossings

30.—(1) No stage of the connection works involving the crossing, diversion and subsequent reinstatement of any designated main river or ordinary watercourse shall commence until a scheme and programme (including a timescale) for that crossing, diversion and reinstatement has been submitted to and, after consultation with the Environment Agency, approved in writing by West Sussex County Council. The designated main river or ordinary watercourse shall be crossed, diverted and subsequently reinstated in accordance with the approved scheme and programme.

(2) Unless otherwise permitted under sub-paragraph (1) above, throughout the period of construction of the connection works, all ditches, watercourses, field drainage systems and culverts shall be maintained such that the flow of water is not impaired or the drainage onto and from adjoining land rendered less effective.

Ecological and landscape management plan

31.—(1) No stage of the connection works outside the South Downs National Park shall commence until a written ecological and landscape management plan for the connection works outside the South Downs National Park (which accords with the outline ecological and landscape management plan) reflecting the survey results and ecological mitigation and enhancement measures, and taking into account landscape reinstatement, included in the environmental statement has been submitted to and approved in writing by West Sussex County Council in consultation with Natural England.

(2) The ecological and landscape management plan shall contain in particular—

- (a) a hedgerows management plan, which shall include proposals for replacement of any hedgerows or important hedgerows to be removed pursuant to **article 37(4)** (felling or lopping of trees and removal of hedgerows and shall accord with the principles set out in the outline hedgerows management plan; and

- (b) an arboricultural method statement which shall include proposals for replacement of any tree to be felled pursuant to **article 37(1)** (felling or lopping of trees and removal of hedgerows) or **article 38(1)** (trees subject to tree preservation orders) and shall accord with the principles set out in the outline arboricultural method statement.
- (3) The ecological and landscape management plan shall include an implementation timetable and shall be carried out as approved.

Ecological and landscape management plan for the South Downs National Park

31A.—(1) No stage of the connection works within the South Downs National Park shall commence until a written ecological and landscape management plan for the connection works within the South Downs National Park (which accords with the outline ecological and landscape management plan) reflecting the survey results and ecological mitigation and enhancement measures, and taking into account landscape reinstatement, included in the environmental statement has been submitted to and approved in writing by the South Downs National Park Authority in consultation with Natural England.

- (2) The ecological and landscape management plan shall contain in particular—
 - (a) a hedgerows management plan, which shall include proposals for replacement of any hedgerows or important hedgerows to be removed pursuant to **article 37(4)** (felling or lopping of trees and removal of hedgerows) and shall accord with the principles set out in the outline hedgerows management plan; and
 - (b) an arboricultural method statement which shall include proposals for replacement of any tree to be felled pursuant to **article 37(1)** (felling or lopping of trees and removal of hedgerows) or **article 38(1)** (trees subject to tree preservation orders) and shall accord with the principles set out in the outline arboricultural method statement.
- (3) The ecological and landscape management plan shall include an implementation timetable and shall be carried out as approved.

Construction health, safety and environmental plan

32.—(1) No stage of the connection works shall commence until a construction health, safety and environmental plan (which may include the CEMP) which sets out the working methods of contractors and site staff and the standards expected, has been submitted to and approved in writing by West Sussex County Council in relation to the connection works.

- (2) The plan shall contain details of—
 - (a) reference to relevant health, safety and environmental legislation and compliance;
 - (b) project organisation and management;
 - (c) method statements and risk assessments;
 - (d) construction site management;
 - (e) communication and emergency response plan;
 - (f) working hours;
 - (g) site security;
 - (h) welfare facilities;
 - (i) local community liaison responsibilities, including communications plan;
 - (j) minimum training requirements for site staff;
 - (k) temporary fences, walls or other means of enclosure outside the South Downs National Park;
 - (l) environmental management; and
 - (m) construction laydown areas.
- (3) The plan approved in relation to the connection works shall be followed in relation to those works.

Construction traffic management plan

33.—(1) No stage of the connection works shall commence until a construction traffic management plan (which accords with the outline construction traffic and management plan) has been submitted to and approved by West Sussex County Council in consultation with the Highways Agency.

(2) The construction traffic management plan shall accord with the principles set out in the environmental statement and shall include proposals for—

- (a) construction vehicle routing;
- (b) site accesses;
- (c) the management of junctions to and crossings of the public highway and other public rights of way;
- (d) the scheduling and timing of movements, in particular the details of abnormal load movements;
- (e) temporary warning signs;
- (f) a workforce travel plan; and
- (g) access routes along the highway network to construction compounds.

(3) The construction traffic management plan shall be implemented as approved.

Construction hours

34.—(1) Construction work for the connection works and any construction-related traffic movements to or from the site of the connection works shall not take place other than between 0700 hours and 1900 hours Monday to Friday and between 0800 hours and 1300 hours on Saturday, with no activity on Sundays, public holidays or bank holidays, save—

- (a) where continuous periods of construction work are required, such as concrete pouring or directional drilling and West Sussex County Council and the South Downs National Park Authority within the South Downs National Park has been notified prior to such works 72 hours in advance;
- (b) for the delivery of abnormal loads to the connection works, which may cause congestion on the local road network and the relevant highway authority has been notified prior to such works 72 hours in advance;
- (c) where works are being carried out on the foreshore;
- (d) as otherwise agreed in writing with West Sussex County Council and the South Downs National Park Authority within the South Downs National Park.

(2) All construction operations which are to be undertaken outside the hours specified in paragraph (1) shall be agreed with West Sussex County Council and the South Downs National Park Authority within the South Downs National Park in writing in advance, and shall be carried out within the agreed times.

External lighting and control of artificial light emissions

35.—(1) No stage of the connection works outside the South Downs National Park where artificial lighting is required shall commence until written details of any external lighting to be installed in connection with that stage, including measures to prevent light spillage, shall have been submitted to and approved by West Sussex County Council; any approved means of lighting shall subsequently be installed as approved.

(2) Work No. 25 shall not be commenced until a written scheme for the management and mitigation of artificial light emissions during the operation of Work No. 25 has been submitted to and approved in writing by West Sussex County Council.

(3) The approved scheme for the management and mitigation of artificial light emissions shall be implemented before and maintained during the operation of Work No. 25.

External lighting in the South Downs National Park

35A. No stage of the connection works within the South Downs National Park where artificial lighting is required shall commence until written details of any external lighting to be installed in connection with that stage, including measures to prevent light spillage, shall have been submitted to and approved by South Downs National Park Authority; any approved means of lighting shall subsequently be installed as approved.

Control of noise during construction

36.—(1) No stage of the connection works shall commence until a written scheme for noise management during construction of those works (which accords with the outline construction noise management plan) has been submitted to and approved by West Sussex County Council.

(2) The scheme shall set out the particulars of—

- (a) the works, and the method by which they are to be carried out;
- (b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits;
- (c) in the case of Work No. 25 and any horizontal directional drilling works, a scheme for monitoring noise to ensure compliance with the noise limits and the effectiveness of the attenuation measures;
- (d) in the case of Work No. 25, restrictions on certain construction activities to within the hours of 0800 and 1800 Monday to Friday and between 0800 hours and 1300 hours on Saturday, with no activity on Sundays, public holidays or bank holidays; and
- (e) provision of notifications regarding exceptional hours of working.

(3) The approved noise management scheme shall be implemented before and maintained during construction of the connection works.

(4) The construction of the connection works shall be undertaken in accordance with the approved noise management scheme.

Control of noise during operational phase

37.—(1) Work No. 25 shall not commence operation until a written scheme for noise management including monitoring and attenuation for the use of Work No. 25 has been submitted to and approved by West Sussex County Council.

(2) The noise management scheme shall be implemented as approved and maintained for the duration of use of the authorised development.

European protected species onshore

38.—(1) No stage of the connection works shall commence until final pre-construction survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by that stage of the connection works or in any of the trees to be lopped or felled as part of that stage of the connection works.

(2) Where a European protected species is shown to be present, the relevant part(s) of the connection works outside the South Downs National Park shall not begin until, after consultation with Natural England, a scheme of protection and mitigation measures has been submitted to and approved in writing by West Sussex County Council. The connection works shall be carried out in accordance with the approved scheme.

(3) "European protected species" has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010(a).

European protected species within the South Downs National Park

38A. Where a European protected species is shown to be present within the South Downs National Park pursuant to **requirement 38** (European protected species onshore), the relevant part(s) of the connection works within the South Downs National Park shall not begin until, after consultation with Natural England, a scheme of protection and mitigation measures has been submitted to and approved in writing by South Downs National Park Authority. The connection works shall be carried out in accordance with the approved scheme.

Restoration of land used temporarily for construction

39.—(1) Any land landward of MLWS within the Order limits and outside the South Downs National Park which is used temporarily for construction of the connection works and not ultimately incorporated in

(a) S.I. 2010/490

permanent works or approved landscaping, shall be reinstated to its former condition, or such condition as West Sussex County Council may approve, within 12 months of completion of commissioning of the relevant stage of authorised development.

(2) For the purposes of this requirement, "completion of commissioning" means the date when the circuits have been fully tested and verified that they are able to transmit their rated power capacity to the grid connection point.

Restoration of land within the South Downs National Park used temporarily for construction

39A.—(1) Any land within the South Downs National Park which is used temporarily for construction of the connection works and not ultimately incorporated in permanent works or approved landscaping, shall be reinstated to its former condition, or such condition as the South Downs National Park Authority may approve, within 12 months of completion of commissioning of the relevant stage of authorised development.

(2) For the purposes of this requirement, "completion of commissioning" means the date when the circuits have been fully tested and verified that they are able to transmit their rated power capacity to the grid connection point.

(3) No connection works within South Downs National Park shall commence until a method statement for the restoration of the chalk grasslands following construction of those works (which accords with the outline Tottington Mount management plan) has been submitted to and approved by the South Downs National Park Authority. The restoration works shall be carried out in accordance with the approved scheme.

End of operational life plan

40.—(1) Upon the cessation of commercial operation of Work No. 1, an end of operational life plan for Work No. 25 shall be submitted to Mid Sussex District Council. In the event of there being no further operational need for Work 25 then sub-sections (2) and (3) shall apply. In the event that an alternative commercial need is identified for Work No. 25 the End of Life Plan shall contain details of that need and of the provisions of sub-sections (2) and (3) below.

(2) Within twelve calendar months of the cessation of commercial operation for whatever purpose of Work No.25 a decommissioning scheme of detailed proposals for the demolition and removal of that Work (in whole or in part) and the final proposed condition of the relevant land, including a proposed timetable for implementation of that scheme, shall be submitted to the relevant planning authority, in consultation with Natural England.

(3) The Work No. 25 decommissioning scheme required under sub-section (2) shall be implemented in accordance with the approved details and timetable unless otherwise agreed by the relevant planning authority.

(4) For the avoidance of doubt the provisions of this requirement shall apply not only to Work 25 but also to any additions thereto as built at the date of cessation of commercial operation

Requirement for written approval

41. Where under any of the above requirements the approval or agreement of the Secretary of State, the relevant planning authority or another body is required, that approval or agreement shall be given in writing.

Amendments to approved details

42.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority or another approval authority (as specified), the approved details shall be carried out as approved unless an amendment or variation is previously agreed in writing by the relevant planning authority or that other approval authority as specified in the relevant requirement in accordance with paragraph (2) and in consultation with any body specified in the relevant requirement or by **requirement 43** (consultation with local planning authority).

(2) Any amendments to or variations from the approved details shall be in accordance with the principles and assessments set out in the environmental statement.

Comment [I21]: Included in view if representations received from WSCC in response to Deadline XI and for reasons of precision and enforceability and to ensure that no land subject to temporary works shall remain unrestored for longer than is necessary.

Deleted: connection works

Deleted: connection works

Comment [I22]: As amended above in requirement 39(1) for consistency

Comment [I23]: These additions to requirement 40 mean that the owner of the beneficial interest at the cessation of the operation of the wind farm will need to provide an end of life plan for the sub-station to the LPA. This could involve an alternative use or permanent cessation of operation. If there is no commercial need for the sub-station at that stage it would have to be decommissioned to the timetable set out in the approved scheme of decommissioning. If on the other hand an alternative user is found, then the scheme of decommissioning would only be required to be implemented at the end of the sub-station's commercial life (whatever that might involve - whether or not related to the Rampion OWF).. This wording is based on the Galloper onshore decommissioning requirement but excludes the underground cable infrastructure.

Deleted: (2) Where decommissioning of Work No. 25 is proposed, the end of operational life plan shall specify a scheme for doing so which shall be approved by Mid Sussex District Council.¶
(3) The scheme under paragraph (2) shall be implemented as approved.¶

(3) The approved details shall be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority or that other approval authority.

Consultation with local planning authority

43.—(1) For the purposes of this requirement, "local planning authority" means the planning authority for the area in which the land to which the relevant provision of this Order applies is situated.

(2) Where an application is made to West Sussex County Council for any consent, agreement or approval under the requirements, details shall be approved by West Sussex County Council in consultation with the local planning authority.

Schedule 2

Article 15

Streets Subject to Street Works

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
In the County of West Sussex, Borough of Worthing	A259 Brighton Road at reference point A - B on the works plan
In the County of West Sussex, Borough of Worthing	Upper Brighton Road at reference point C - D on the works plan
In the County of West Sussex, Borough of Worthing	A27 road at reference point E - F on the works plan
In the County of West Sussex, Borough of Worthing	Lambleys Lane at reference point G - H on the works plan
In the County of West Sussex, District of Adur	Titch Hill at reference point I - J on the works plan
In the County of West Sussex, District of Adur	Coombes Road at reference point K - L on the works plan
In the County of West Sussex, District of Adur	A283 road at reference point M - N on the works plan
In the County of West Sussex, District of Horsham	Mill Hill at reference point O - P on the works plan
In the County of West Sussex, District of Horsham	Unnamed road at Beeding Hill at reference point Q - R on the works plan
In the County of West Sussex, District of Horsham	Edburton Road at reference point S - T on the works plan
In the County of West Sussex, District of Horsham	Unnamed road at reference point U - V on the works plan
In the County of West Sussex, District of Horsham	Horn Lane at reference point W - X on the works plan
In the County of West Sussex, District of Horsham	A281 Brighton Road at reference point Y - Z on the works plan
In the County of West Sussex, District of Horsham	B2116 Henfield Road at reference point AA - BB on the works plan
In the County of West Sussex, District of Mid Sussex	Bob Lane at reference point CC - DD on the works plan

Schedule 3

Article 17

Footpath to be permanently stopped up

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Footpath to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New footpath to be substituted</i>
In the County of West Sussex, District of Mid Sussex	Footpath 8T to the north of Bob Lane, Twineham	Approximately 453 metres of footpath 8T shown by vertical zebra stripes between the points marked A and E on the footpath stopping up and diversion plan	Approximately 736 metres of new footpath 8T shown by a black line between the points marked A, B, C, D and E on the footpath stopping up and diversion plan

Schedule 4

Article 17

Public rights of way to be temporarily stopped up

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public rights of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
In the County of West Sussex, Borough of Worthing	No. 3135, Footpath	Approximately 40 metres of footpath 3135 shown orange between the points marked A and B on the public rights of way temporary closure plan
In the County of West Sussex, Borough of Worthing, South Downs National Park	No. 3134, Footpath	Approximately 44 metres of footpath 3134 shown orange between the points marked C and D on the public rights of way temporary closure plan
In the County of West Sussex, Borough of Worthing, South Downs National Park	No. 3134, Footpath	Approximately 47 metres of footpath 3134 shown orange between the points marked E and F on the public rights of way temporary closure plan
In the County of West Sussex, District of Adur, South Downs National Park	No. 2073, Footpath	Approximately 41 metres of footpath 2073 shown orange between the points marked G and H on the public rights of way temporary closure plan
In the County of West Sussex, District of Adur, South Downs National Park	No. 2075, Bridleway	Approximately 40 metres of bridleway 2075 shown orange between the points marked I and J on the public rights of way temporary closure plan
In the County of West Sussex, District of Adur, South Downs National Park	No. 2061/1, Bridleway	Approximately 56 metres of bridleway 2061/1 shown orange between the points marked M and N on the public rights of way temporary closure plan
In the County of West Sussex, District of Adur, South Downs National Park	No. 2059, Restricted byway	Approximately 42 metres of restricted byway 2059 shown orange between the points marked K and L on the public rights of way temporary closure plan
In the County of West Sussex, District of Adur, South Downs National Park	No. 2061/1, Bridleway	Approximately 48 metres of bridleway 2061/1 shown orange between the points marked O and P on the public rights of way temporary closure plan
In the County of West Sussex, District of Adur, South Downs National Park	No. 2064/1, Footpath	Approximately 41 metres of footpath 2064/1 shown orange between the points marked Q and R on the public rights of way temporary closure plan
In the County of West Sussex, District of	No. 2761, Public byway	Approximately 65 metres of public byway 2761 shown orange between the points marked S and T on the public

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public rights of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
Horsham, South Downs National Park		rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2758, Bridleway (The Monarch's Way)	Approximately 40 metres of bridleway 2758 shown orange between the points marked U and V on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2760, Restricted byway, National Trail (The South Downs Way)	Approximately 78 metres of restricted byway, National Trail 2760 shown orange between the points marked W and X on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2754, Bridleway	Approximately 78 metres of bridleway 2754 shown orange between the points marked W and X on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2754, Bridleway	Approximately 47 metres of bridleway 2754 shown orange between the points marked Y and Z on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2754, Bridleway	Approximately 82 metres of bridleway 2754 shown orange between the points marked Aa and Ab on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2754, Bridleway	Approximately 42 metres of bridleway 2754 shown orange between the points marked Ac and Ad on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2745, Footpath	Approximately 48 metres of footpath 2745 shown orange between the points marked Ae and Af on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2741, Footpath	Approximately 43 metres of footpath 2741 shown orange between the points marked Ag and Ah on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2739, Footpath	Approximately 65 metres of footpath 2739 shown orange between the points marked Ak and Al on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2739, Footpath	Approximately 87 metres of footpath 2739 shown orange between the points marked Ai and Aj on the public rights of way temporary closure plan
In the County of West Sussex, District of	No. 3672, Bridleway	Approximately 58 metres of bridleway 3672 shown orange between the points marked Am and An on the

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public rights of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
Horsham		public rights of way temporary closure plan
In the County of West Sussex, District of Horsham	No. 3188, Footpath	Approximately 41 metres of footpath 3188 shown orange between the points marked Ao and Ap on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham	No. 3189, Footpath	Approximately 124 metres of footpath 3189 shown orange between the points marked Aq and Ar on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham	No. 3187, Footpath	Approximately 41 metres of footpath 3187 shown orange between the points marked As and At on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham	No. 2540, Footpath	Approximately 41 metres of footpath 2540 shown orange between the points marked Au and Av on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham	No. 2535, Footpath	Approximately 41 metres of footpath 2535 shown orange between the points marked Aw and Ax on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham	No 2534 ,Footpath	Approximately 40 metres of footpath 2534 shown orange between the points marked Ay and Az on the public rights of way temporary closure plan
In the County of West Sussex, District of Mid Sussex	No. 12T, Footpath	Approximately 48 metres of footpath 12T shown orange between the points marked Ba and Bb on the public rights of way temporary closure plan
In the County of West Sussex, District of Mid Sussex	No. 4T, Bridleway	Approximately 45 metres of bridleway 4T shown orange between the points marked Bc and Bd on the public rights of way temporary closure plan
In the County of West Sussex, District of Mid Sussex	No. 11T, Footpath	Approximately 41 metres of footpath 11T shown orange between the points marked Be and Bf on the public rights of way temporary closure plan
In the County of West Sussex, District of Mid Sussex	No. 14T, Footpath	Approximately 42 metres of footpath 14T shown orange between the points marked Bg and Bh on the public rights of way temporary closure plan
In the County of West Sussex, District of Mid Sussex	No. 9T, Footpath	Approximately 17 metres of footpath 9T shown orange between the points marked Bi and Bj on the public rights of way temporary closure plan
In the County of West Sussex, District of Mid Sussex	No. 1T, Footpath	Approximately 44 metres of footpath 1T shown orange between the points marked Bm and Bn on the public rights of way temporary closure plan

Schedule 5

Article 18

Access to Works

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
In the County of West Sussex, Borough of Worthing	Vehicular access from the A259 Brighton Road to the southwest at the point marked AC1 on the access to works plan
In the County of West Sussex, Borough of Worthing	Vehicular access from the A259 Brighton Road to the north at the point marked AC2 on the access to works plan
In the County of West Sussex, Borough of Worthing	Vehicular access from St Pauls Avenue to the west at the point marked AC3 on the access to works plan
In the County of West Sussex, Borough of Worthing	Vehicular access from Upper Brighton Road to the south at the point marked AC4 on the access to works plan
In the County of West Sussex, Borough of Worthing	Vehicular access from Upper Brighton Road to the north at the point marked AC5 on the access to works plan
In the County of West Sussex, District of Adur	Vehicular access from Lambley's Lane to the west at the point marked AC6 on the access to works plan
In the County of West Sussex, Borough of Worthing	Vehicular access from Lambley's Lane to the west at the point marked AC7 on the access to works plan
In the County of West Sussex, District of Adur	Vehicular access from Lambley's Lane to the east at the point marked AC8 on the access to works plan
In the County of West Sussex, District of Adur	Vehicular access from Titch Hill to the west at the point marked AC9 on the access to works plan
In the County of West Sussex, District of Adur	Vehicular access from Titch Hill to the east at the point marked AC10 on the access to works plan
In the County of West Sussex, District of Adur	Vehicular access from Coombes Road to the west at the point marked AC11 on the access to works plan
In the County of West Sussex, District of Adur	Vehicular access from Coombes Road to the east at the point marked AC12 on the access to works plan
In the County of West Sussex, District of Adur	Vehicular access from the A283 Steyning Road to the west at the point marked AC13 on the access to works plan
In the County of West Sussex, District of Adur	Vehicular access from the A283 Steyning Road to the east at the point marked AC14 on the access to works plan

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
In the County of West Sussex, District of Horsham	Vehicular access from Mill Hill to the south at the point marked AC15 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from Mill Hill to the north at the point marked AC16 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from the unnamed road at Beeding Hill to the south at the point marked AC17 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from the unnamed road at Beeding Hill to the north at the point marked AC18 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from Edburton Road to the south at the point marked AC19 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from Edburton Road to the north at the point marked AC20 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from Horn Lane to the south at the point marked AC21 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from Horn Lane to the north at the point marked AC22 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from A281 Brighton Road to the north at the point marked AC23 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from A281 Brighton Road to the north at the point marked AC24 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from B2116 Henfield Road to the south at the point marked AC25 on the access to works plan
In the County of West Sussex, District of Mid Sussex	Vehicular access from B2116 Henfield Road to the north at the point marked AC26 on the access to works plan
In the County of West Sussex, District of Mid Sussex	Vehicular access from Bob Lane to the south at the point marked AC27 on the access to works plan
In the County of West Sussex, District of Mid Sussex	Vehicular access from Bob Lane to the north at the point marked AC28 on the access to works plan
In the County of West Sussex, District of Mid Sussex	Vehicular access from Bob Lane to the north at the point marked AC29 on the access to works plan
In the County of West Sussex, District of Mid Sussex	Vehicular access from Wineham Lane to the east at the point marked AC30 on the access to works plan

Schedule 6

Article 22

Temporary suspension of public access to Access land

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Area subject to temporary suspension of public rights</i>
In the County of West Sussex, District of Horsham, South Downs National Park	The area of land shown in purple and marked OAL 1 on the open access land plan
In the County of West Sussex, District of Horsham, South Downs National Park	The area of land shown in purple and marked OAL 2 on the open access land plan
In the County of West Sussex, District of Horsham, South Downs National Park	The area of land shown in purple and marked OAL 3 on the open access land plan

Schedule 7

Article 25

Land in which only new rights etc., may be acquired

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>
1	The right to enter and remain upon the land for the purposes of construction installation, operation, maintenance and decommissioning of the authorised project and to:
3	
23	
37 – 41	
	(a) lay down, install, adjust, alter, construct, use, maintain, repair, renew, upgrade, inspect, remove and replace underground electricity cables together with such telemetry and fibre optic lines, ducting, jointing bays and other apparatus, protection measures, safety measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (which collectively shall be referred as the "cables");
	(b) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables;
	(c) retain and use the cables for the purpose of the transmission of electricity;
	(d) pass and re-pass with or without vehicles, plant and machinery for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables;
	(e) place and to use plant, machinery, structures and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;
	(f) erect fencing and create secure works compounds;
	(g) construct, lay down, use and remove temporary access roads including any necessary temporary bridging of water courses and drains;
	(h) effect access to the highway;
	(i) install and maintain cable marker posts to identify the location of the cables;
	(j) fell, lop, cut or coppice trees or remove roots of trees or hedges or shrubs;
	(k) install, use, inspect, maintain, adjust, alter, renew, repair, test, cleanse, improve or extend drainage and culverts;
	(m) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers);
	(n) remove fences within the land during any period during which construction, maintenance, repair or renewal are being carried out (subject to the prior erection of any temporary stock proof

(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>fencing as is reasonably required and the re-instating of the original fences following the exercise of the rights);</p> <p>(o) use or resort to directional drilling for the installation of the cables; and</p> <p>(p) carry out environmental or ecological mitigation or enhancement works.</p>
6	<p>The right to enter and remain upon the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to:</p> <p>(a) lay down, install, adjust, alter, construct, use, maintain, repair, renew, upgrade, inspect, remove and replace underground electricity cables together with such telemetry and fibre optic lines, ducting, jointing bays and other apparatus, protection measures, safety measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (which collectively shall be referred as the "cables");</p> <p>(b) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables;</p> <p>(c) retain and use the cables for the purpose of the transmission of electricity;</p> <p>(d) pass and re-pass with or without vehicles, plant and machinery for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables;</p> <p>(e) temporarily place and to use plant, machinery and structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;</p> <p>(f) effect access to the highway;</p> <p>(g) install and maintain cable marker posts to identify the location of the cables;</p> <p>(h) install, use, inspect, maintain, adjust, alter, renew, repair, adjust, test, extend replace, improve or cleanse drainage or culverts;</p> <p>(i) install alter, re-lay, maintain, adjust, protect or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers);</p> <p>(j) use or resort to directional drilling for the installation of the cables;</p> <p>(k) maintain, replace, renew and remove underground transition pits for the connection of offshore cable circuits to onshore cable circuits; and</p> <p>(l) carry out environmental or ecological mitigation or enhancement works.</p>
7 – 9	<p>The right to enter and remain upon the land for the purposes of construction, installation, operation, maintenance and</p>

(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>decommissioning of the authorised project and to:</p> <p>(a) lay down, install, adjust, alter, construct, use, maintain, repair, renew, upgrade, inspect, remove and replace underground electricity cables together with such telemetry and fibre optic lines, ducting, jointing bays and other apparatus, protection measures, safety measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (which collectively shall be referred as the "cables");</p> <p>(b) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables;</p> <p>(c) retain and use the cables for the purpose of the transmission of electricity;</p> <p>(d) pass and re-pass with or without vehicles, plant and machinery for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables;</p> <p>(e) temporarily place and to use plant, machinery and structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;</p> <p>(f) effect access to the highway;</p> <p>(g) install and maintain cable marker posts to identify the location of the cables;</p> <p>(h) install, use, inspect, maintain, adjust, alter, renew, repair, adjust, test, extend replace, improve or cleanse drainage or culverts;</p> <p>(i) install alter, re-lay, maintain, adjust, protect or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers);</p> <p>(j) use or resort to directional drilling for the installation of the cables; and</p> <p>(k) carry out environmental or ecological mitigation or enhancement works.</p>
<p>11 13 14 21 24 35 42</p>	<p>1. The right to enter and remain upon the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to:</p> <p>(a) lay down, install, adjust, alter construct, use, maintain, repair, renew, upgrade, inspect, remove and replace underground electricity cables together with such telemetry and fibre optic lines, ducting, jointing bays and other apparatus, protection measures, safety measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (which collectively shall be referred as the "cables");</p> <p>(b) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables;</p> <p>(c) retain and use the cables for the purpose of the transmission of</p>

(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>electricity;</p> <p>(d) pass and re-pass with or without vehicles plant and machinery for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables;</p> <p>(e) place and to use plant, machinery, structures and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;</p> <p>(f) erect fencing and create secure works compounds;</p> <p>(g) construct, lay down, use and remove temporary access roads including any necessary temporary bridging of water courses and drains;</p> <p>(h) effect access to the highway;</p> <p>(i) install and maintain cable marker posts to identify the location of the cables (subject to an obligation to minimise interference with future use and operations within the land);</p> <p>(j) fell, lop or cut or coppice trees or remove roots of trees or hedges or shrubs;</p> <p>(k) install, use, inspect, maintain, adjust, alter, renew, repair, test or cleanse drainage and to alter, adjust, replace, improve or extend culverts;</p> <p>(l) install alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers);</p> <p>(m) remove fences within the land during any period during which construction, maintenance, repair or renewal are being carried out (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the re-instating of the original fences following the exercise of the rights);</p> <p>(n) store and stockpile materials (including excavated material) within the Order lands;</p> <p>(o) use or resort to directional drilling for the installation of the cables;</p> <p>(p) lay out temporary paths for public use; and</p> <p>(q) carry out environmental or ecological mitigation or enhancement works.</p> <p>2. A restrictive covenant over the land for the benefit of the remainder of the Order land to:</p> <p>(a) prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto);</p> <p>(b) prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially</p>

(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>more difficult or expensive to maintain the authorised project);</p> <p>(c) prevent anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the Undertaker save as are reasonably required for agricultural activities;</p> <p>(d) prevent the planting or growing within the Order land any trees, shrubs or underwood without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project).</p>
<p>12 22 36</p>	<p>The right to enter and remain upon the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to:</p> <p>(a) by way of directional drilling to lay down, install, adjust, alter construct, use, maintain, repair, renew, upgrade, inspect, remove and replace underground electricity cables together with such telemetry and fibre optic lines, ducting, jointing bays and other apparatus, protection measures, safety measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (which collectively shall be referred as the "cables");</p> <p>(b) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables;</p> <p>(c) retain and use the cables for the purpose of the transmission of electricity;</p> <p>(d) pass and re-pass with or without vehicles plant and machinery for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables;</p> <p>(e) place and to use plant, machinery, structures and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;</p> <p>(f) install and maintain cable marker posts to identify the location of the cables (subject to an obligation to minimise interference with future use and operations within the land);</p> <p>(g) fell, lop or cut or coppice trees or remove roots of trees or hedges or shrubs;</p> <p>(h) install, use, inspect, maintain, adjust, alter, renew, repair, test or cleanse drainage and to alter, adjust, replace, improve or extend culverts;</p> <p>(i) install alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers); and</p> <p>(j) remove fences within the land during any period during which construction, maintenance, repair or renewal are being carried</p>

(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	out (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the re-instating of the original fences following the exercise of the rights)
15 - 19 25 - 27 29 - 32 34 43 - 45 47 - 49 51 - 54 57, 58 60 - 63 65 - 67 69, 70 72 - 80 83 85 - 87 89	1. The right to enter and remain upon the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to: <ul style="list-style-type: none"> (a) lay down, install, adjust, alter construct, use, maintain, repair, renew, upgrade, inspect, remove and replace underground electricity cables together with such telemetry and fibre optic lines, ducting, jointing bays and other apparatus, protection measures, safety measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (which collectively shall be referred as the "cables"); (b) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables; (c) retain and use the cables for the purpose of the transmission of electricity; (d) pass and re-pass with or without vehicles plant and machinery for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables; (e) place and to use plant, machinery, structures and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables; (f) erect fencing and create secure works compounds; (g) construct, lay down, use and remove temporary access roads including any necessary temporary bridging of water courses and drains; (h) effect access to the highway; (i) install and maintain cable marker posts to identify the location of the cables (subject to an obligation to minimise interference with future use and operations within the land); (j) fell, lop or cut or coppice trees or remove roots of trees or hedges or shrubs; (k) install, use, inspect, maintain, adjust, alter, renew, repair, adjust, test, extend replace, improve or cleanse drainage or culverts; (l) install alter, re-lay, maintain, adjust, protect or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers); (m) remove fences within the land during any period during which construction, maintenance, repair or renewal are being carried out (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the re-instating of the original fences following the exercise of the rights); (n) store and stockpile materials (including excavated material) within the Order lands;

(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>(o) use or resort to directional drilling for the installation of the cables;</p> <p>(p) lay out temporary paths for public use; and</p> <p>(q) carry out environmental or ecological mitigation or enhancement works.</p> <p>2. A restrictive covenant over the land for the benefit of the remainder of the Order land to:</p> <p>(a) prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto);</p> <p>(b) prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);</p> <p>(c) prevent anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the Undertaker save as are reasonably required for agricultural activities;</p> <p>(d) not disturb the soil and subsoil at a depth of or under 0.5 metres below the surface of the Order land;</p> <p>(e) prevent the planting or growing within the Order land any trees, shrubs or underwood without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project).</p>
<p>20</p> <p>28</p> <p>33</p> <p>46</p> <p>50</p> <p>59</p> <p>64</p> <p>68</p> <p>71</p> <p>81, 82</p> <p>88</p> <p>99 - 101</p>	<p>The right to enter and remain upon the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to:</p> <p>(a) lay down, install, adjust, alter construct, use, maintain, repair, renew, upgrade, inspect, remove and replace underground electricity cables together with such telemetry and fibre optic lines, ducting, jointing bays and other apparatus, protection measures, safety measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (which collectively shall be referred as the "cables");</p> <p>(b) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables;</p> <p>(c) retain and use the cables for the purpose of the transmission of electricity;</p> <p>(d) pass and re-pass with or without vehicles plant and machinery for the purposes of laying down, installing, adjusting, altering,</p>

(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables;</p> <p>(e) place and to use plant, machinery, structures and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;</p> <p>(f) erect fencing and create secure works compounds;</p> <p>(g) construct, lay down, use and remove temporary access roads including any necessary temporary bridging of water courses and drains;</p> <p>(h) effect access to the highway;</p> <p>(i) install and maintain cable marker posts to identify the location of the cables (subject to an obligation to minimise interference with future use and operations within the land);</p> <p>(j) fell, lop or cut or coppice trees or remove roots of trees or hedges or shrubs;</p> <p>(k) install, use, inspect, maintain, adjust, alter, renew, repair, adjust, test, extend replace, improve or cleanse drainage or culverts;</p> <p>(l) install alter, re-lay, maintain, adjust, protect or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers);</p> <p>(m) remove fences within the land during any period during which construction, maintenance, repair or renewal are being carried out (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the re-instating of the original fences following the exercise of the rights);</p> <p>(n) store and stockpile materials (including excavated material) within the Order lands;</p> <p>(o) use or resort to directional drilling for the installation of the cables;</p> <p>(p) lay out temporary paths for public use; and</p> <p>(q) carry out environmental or ecological mitigation or enhancement works.</p>
84	<p>The right to enter and remain upon the land for the purposes of construction installation, operation, maintenance and decommissioning of the authorised project and to:</p> <p>(a) lay down, install, adjust, alter, construct, use, maintain, repair, renew, upgrade, inspect, remove and replace underground electricity cables together with such telemetry and fibre optic lines, ducting, jointing bays and other apparatus, protection measures, safety measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (which collectively shall be referred as the "cables");</p> <p>(b) retain and use the cables for the purpose of the transmission of electricity;</p> <p>(c) pass and re-pass with or without vehicles, plant and machinery for the purposes of laying down, installing, adjusting, altering,</p>

(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables;</p> <p>(d) place and to use plant, machinery, structures and temporary structures under the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;</p> <p>(e) erect fencing;</p> <p>(f) install and maintain cable marker posts to identify the location of the cables;</p> <p>(g) install, use, inspect, maintain, adjust, alter, renew, repair, test, cleanse, improve or extend drainage and culverts;</p> <p>(h) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers);</p> <p>(i) remove fences within the land during any period during which construction, maintenance, repair or renewal are being carried out (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the re-instating of the original fences following the exercise of the rights);</p> <p>(j) use or resort to directional drilling for the installation of the cables; and</p> <p>(k) carry out environmental or ecological mitigation or enhancement works.</p>

Schedule 8

Article 25

Modification of Compensation and Compulsory Purchase Enactments for Creation of
New Rights and Restrictive Covenants*Compensation enactments*

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words "land is acquired or taken" there shall be substituted the words "a right or restrictive covenant over land is purchased from or imposed on"; and
- (b) for the words "acquired or taken from him" there shall be substituted the words "over which the right is exercisable or the restrictive covenant enforceable".

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word "part" in paragraphs (a) and (b) there shall be substituted the words "a right over or restrictive covenant affecting land consisting";
- (b) for the word "severance" there shall be substituted the words "right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden";
- (c) for the words "part proposed" there shall be substituted the words "right or restrictive covenant proposed"; and
- (d) for the words "part is" there shall be substituted the words "right or restrictive covenant is".

Application of the 1965 Act

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

"7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance

(a) 1973 c.26

from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act."

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following section—

"8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house ("the relevant land")—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal ("the tribunal"); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs, the Rampion Offshore Wind Farm Order 2011[●](a) ("the Order") shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person's interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.
- (2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.
- (3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice."

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

Schedule 9

Article 31

Land of which Temporary Possession may be taken

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised project</i>
In the County of West Sussex, Borough of Worthing	1 6-9 11 19 - 26	Construction and carrying out of the authorised project; worksites for construction and the carrying out of the authorised project; access for carrying out the authorised project	Work Nos. 3B, 7, 8, 9 13 - 15
In the County of West Sussex, Borough of Worthing	4, 5	Construction compound; access for carrying out the authorised project	Work Nos. 3B, 6
In the County of West Sussex, Borough of Worthing	2, 4, 5, 10	Laying of temporary haul roads and improvements to tracks; access for carrying out the authorised project	Work Nos. 4, 5, 6, 7, 8, 9 and 10
In the County of West Sussex, District of Adur	12 – 18 27 – 44	Construction and carrying out of the authorised project; worksites for construction and the carrying out of the authorised project; access for carrying out the authorised project	Work Nos. 11, 12, 13, 14, 15, 16, 17, 18 and 19
In the County of West Sussex, District of Horsham, South Downs National Park	45 – 54 57 – 81	Construction and carrying out of the authorised project; worksites for construction and the carrying out of the authorised project; access for carrying out the authorised project	Work Nos. 20, 21, 22, 23
In the County of West Sussex, District of Horsham	55, 56	Construction compound; access for carrying out the authorised project	Work Nos. 21
In the County of West Sussex, District of Mid Sussex	82 – 89	Construction and carrying out of the authorised project; worksites for construction and the carrying out of the	Work Nos. 24

(1) Area	(2) Number of land shown on land plan	(3) Purpose for which temporary possession may be taken	(4) Relevant part of the authorised project
		authorised project; access for carrying out the authorised project	
In the County of West Sussex, District of Mid Sussex	91 96 - 98	Laying of temporary haul roads and improvements to tracks; access for carrying out the authorised project	Work Nos. 25, 26

Schedule 10

Article 37

Important Hedgerows

<i>(1)</i> <i>Area</i>	<i>(3)</i> <i>Reference of hedgerow</i>
In the County of West Sussex, Borough of Worthing	The important hedgerow marked 3 on the important hedgerows plan
In the County of West Sussex, Borough of Worthing	The important hedgerow marked 6 on the important hedgerows plan
In the County of West Sussex, District of Adur	The important hedgerow marked 37 on the important hedgerows plan
In the County of West Sussex, District of Adur	The important hedgerow marked 38 on the important hedgerows plan
In the County of West Sussex, District of Adur	The important hedgerow marked 47 on the important hedgerows plan
In the County of West Sussex, District of Adur	The important hedgerow marked 48 on the important hedgerows plan
In the County of West Sussex, Borough of Worthing	The important hedgerow marked 53 on the important hedgerows plan
In the County of West Sussex, Borough of Worthing	The important hedgerow marked 55 on the important hedgerows plan
In the County of West Sussex, Borough of Worthing	The important hedgerow marked 57 on the important hedgerows plan
In the County of West Sussex, Borough of Worthing	The important hedgerow marked 58 on the important hedgerows plan
In the County of West Sussex, Borough of Worthing	The important hedgerow marked 60 on the important hedgerows plan
In the County of West Sussex, Borough of Worthing, South Downs National Park	The important hedgerow marked 63 on the important hedgerows plan
In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 64 on the important hedgerows plan
In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 68 on the important hedgerows plan
In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 71 on the important hedgerows plan
In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 76 on the important hedgerows plan
In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 81 on the important hedgerows plan
In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 85 on the important hedgerows plan

In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 90 on the important hedgerows plan
In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 91 on the important hedgerows plan
In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 93 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 117 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 119 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 124 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 129 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 133 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 136 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 142 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 148 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 149 on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked 151 on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked 152 on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked 153 on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked A on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked B on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked C on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked D on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked E on the important hedgerows plan

	hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 318 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 316 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 314 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 218 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 220 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 224 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 226 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 252 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 254 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 259 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 260 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 280 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 279 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 270a on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 271 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 278 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 275 on the important hedgerows plan

Schedule 11

Article 38

Trees subject to Tree Preservation Orders

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Type of tree and reference</i>	<i>(3)</i> <i>Work to be carried out</i>
In the County of West Sussex, Borough of Worthing [Borough Council of Worthing Tree Preservation Order No. 1 of 2003]	Individual tree Camperdown Elm (<i>Ulmus glabra</i> , var. 'Camperdown') at the point marked T3 on the tree protection order plan	Felling or lopping or cutting back roots
In the County of West Sussex, Borough of Worthing [Borough Council of Worthing Tree Preservation Order No. 1 of 2003]	Group of 7 trees, consisting of: 2 Lombardy Poplar (<i>Populus nigra</i> , var. 'Italica') 4 Whitebeam (<i>Sorbus aria</i>) and 1 Elm (<i>Ulmus procera</i>) in the area marked G2 on the tree protection order plan	Lopping or cutting back roots
In the County of West Sussex, Borough of Worthing [Borough Council of Worthing Tree Preservation Order No. 1 of 2003]	Woodland, consisting of Ash (<i>Fraxinus excelsior</i>) Aspen (<i>Populus tremula</i>) and Lombardy Poplar (<i>Populus nigra</i> , var 'Italica') in the area marked W3 on the tree protection order plan	Lopping or cutting back roots

Schedule 12

Article 41

Protective Provisions

PART 1

FOR THE PROTECTION OF RAILWAY INTERESTS

1. The following provisions of this schedule shall have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

"construction" includes execution, placing, alteration and reconstruction and construct and constructed have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, 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 railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail Infrastructure Limited and:

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

specified work means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3. (a) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.
- (b) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail shall:
 - (i) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
 - (ii) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4. (a) The undertaker shall not exercise the powers conferred by articles 21 (Authority to survey and investigate the land), 23 (Compulsory Acquisition of land), 25 (Compulsory acquisition of rights), 26 (Private rights) 29 (Acquisition of part of certain properties), 28 (Acquisition of subsoil only), 31 (Temporary use of land for carrying out the authorised project), 32 (Temporary use of land for maintaining authorised project) and 33 (Statutory undertakers), 37 (Felling or lopping of trees and removal of hedgerows) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.
 - (b) The undertaker shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.
 - (c) The undertaker shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.
 - (d) The undertaker shall not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.
 - (e) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.
5. (a) The undertaker shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.
 - (b) The approval of the engineer under sub-paragraph (a) shall not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, he shall be deemed to have approved the plans as submitted.
 - (c) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (b), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.
 - (d) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works shall be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.
6. (a) Any specified work and any protective works to be constructed by virtue of paragraph 5(d) shall, when commenced, be constructed—
 - (i) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
 - (ii) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

- (iii) in such manner as to cause as little damage as is possible to railway property; and
 - (iv) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.
- (b) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker shall, notwithstanding any such approval, make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.
- (c) Nothing in this Schedule shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker shall—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

- 9. (a)** If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.
- (b) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail shall assume construction of that part of the specified work and the undertaker shall, notwithstanding any such approval of a specified work under paragraph 5(c), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.
- (c) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.
- (d) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail:

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(c) or in constructing any protective works under the provisions of paragraph 5(d) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11. (a) In this paragraph:

"EMI" means, subject to sub-paragraph (b), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development (including the operation of tramcars using the tramway comprised in the works) where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

- (b) This paragraph shall apply to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 5(a) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).
- (c) Subject to sub-paragraph (e), the undertaker shall in the design and construction of the authorised development take all measures necessary to prevent EMI and shall establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.
- (d) In order to facilitate the undertaker's compliance with sub-paragraph (c):
 - (i) the undertaker shall consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter shall continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(a)) in order to identify all potential causes of EMI and the measures required to eliminate them;
 - (ii) Network Rail shall make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (i); and
 - (iii) Network Rail shall allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (i).
- (e) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail shall not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution shall be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(a) shall have effect subject to the sub-paragraph.
- (f) If at any time prior to the commencement of regular revenue-earning operations on the authorised tramway comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (c), the testing or commissioning of the authorised development causes EMI then the undertaker shall immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (e)) to Network Rail's apparatus.
- (g) In the event of EMI having occurred:

- (i) the undertaker shall afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
 - (ii) Network Rail shall afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
 - (iii) Network Rail shall make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.
- (h) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (e) or (f):
- (i) Network Rail shall allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
 - (ii) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the undertaker in accordance with paragraph 6.
- (i) To the extent that it would not otherwise do so, the indemnity in paragraph 15(a) shall apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (f) applies.
- (j) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.
- (k) In relation to any dispute arising under this paragraph the reference in article 42 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it shall have first consulted Network Rail and it shall comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

- 15.** (a) The undertaker shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail:
- (i) by reason of the construction or maintenance of a specified work or the failure thereof; or
 - (ii) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker shall indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

- (b) Network Rail shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.
- (c) The sums payable by the undertaker under sub-paragraph (a) shall include a sum equivalent to the relevant costs.

- (d) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (c) which relates to the relevant costs of that train operator.
- (e) The obligation under sub-paragraph (c) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub paragraph (d).
- (f) In this paragraph—
"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (a); and
"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail shall, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of:

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993.

20. The undertaker shall give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 40 (Certification of Plans etc) of this Order and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate):

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The undertaker shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 40 (Certification of Plans etc) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

PART 2

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Application

1. For the protection of the persons referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and the protected person concerned, have effect.

Interpretation

2. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of the protected person to enable the protected person in question to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by the protected person;

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than "A-" if the rating is assigned by Standard & Poor's Ratings Group or "A3" if the rating is assigned by Moody's Investors Services Inc. (or an equivalent credit rating from an equivalent organisation in the event that such organisation or ratings are no longer applicable);

"acceptable insurance" means a policy of public liability/ third party liability insurance effected and maintained by the undertaker with insurance cover of not less than £50,000,000.00 (fifty million pounds) per event for the construction period of the onshore works pursuant to this Order with an internationally recognised insurer of repute operating in the London and worldwide insurance market, such policy shall include (but without limitation):

- (a) the protected person named as an insured party under the policy;
- (b) a cross liabilities clause; and
- (c) a waiver of subrogation in favour of the protected person.

"acceptable security" means either:

- (a) evidence provided to the protected person's reasonable satisfaction that the undertaker has a tangible net worth of not less than £100,000,000.00 (one hundred million pounds) (or an equivalent financial measure); or
- (b) a parent company guarantee from the undertaker's ultimate parent company such company having a tangible net worth of not less than £100,000,000.00 (one hundred million pounds) (or an equivalent financial measure) in favour of the protected person to cover the undertaker's liability to the protected person to a cap of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £25,000,000 (twenty-five million pounds) in a form satisfactory to the protected person in its reasonable opinion; or
- (c) a bank bond or letter of credit from an acceptable credit provider in favour of the protected person to cover the undertaker's liability to the protected person for an amount of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £25,000,000 (twenty-five million pounds) in a form satisfactory to the protected person in its reasonable opinion;

"commence" has the same meaning as in **article 2** but for the purposes of this Schedule 12 any works whatsoever which are near to or may affect apparatus of the protected person shall be included within this definition and for the avoidance of doubt this includes works for the diversion or laying of services;

"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, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the protected person including construct, use, repair, alter, inspect, renew or remove the apparatus;

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

"protected person" means National Grid Electricity Transmission plc.

3. Except for paragraphs 4 (apparatus in stopped up streets), and 9 (retained apparatus: protection), 10 (expenses) and 11 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act (as if this Order did not apply).

Apparatus of Protected Person in stopped up streets

4.—(1) Where any street is stopped up under this Order, any protected person whose apparatus is in the street or accessed via that street shall be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to the protected person legal easements reasonably satisfactory to the specified protected person in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of **article 16** (temporary stopping up of streets), or otherwise under this Order, a protected person shall be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway 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 highway.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by this Order shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected person and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of any protected person or any interruption in the supply of electricity, gas or water, as the case may be, by the protected person is caused, the undertaker shall bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) make compensation to the protected person for any loss sustained by it; and
- (b) indemnify the protected person in relation to all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that protected person, by reason of any such damage or interruption.

(2) Nothing in this paragraph shall impose any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of a protected person or its contractors or workmen; and the protected person shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without first consulting the undertaker and giving it an opportunity to make representations as to the claim or demand.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any apparatus or override any easement or other interest of a protected person or acquire any land or other interest of a protected person or create any new rights over the same otherwise than by agreement of the relevant protected person such agreement not to be unreasonably withheld or delayed (having regard to the protected person's existing and future requirements for such land or interests).

(2) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not interfere with any communications cables or equipment used by the protected person in relation to its apparatus or acquire or interfere with any rights or interests supporting the use, maintenance or renewal of such equipment otherwise than by agreement of the relevant protected person (such agreement not to be unreasonably withheld or delayed).

Removal of apparatus

7.—(1) If, in the exercise of agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus of the protected person is placed, that apparatus shall not be removed under this part of this Schedule and any right of a protected person to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the protected person in question in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the protected person in question 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus 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 a protected person reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the protected person to their satisfaction (taking into account 8(1) below) the necessary facilities and rights for

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) 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 protected person in question shall, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an 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 protected person to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the protected person in question and the undertaker (both acting reasonably).

(5) The protected person in question shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected person of any such facilities and rights as are referred to in sub-paragraph (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.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a protected person facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and the protected person in question (both acting reasonably) and shall be no less favourable on the whole to the protected person in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by the protected person.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected person under 8(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the protected person 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 in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: Protection: Electricity Undertakers

9.—(1) Not less than 56 days before commencing the execution of any works authorised by 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 7(2) or otherwise, the undertaker shall submit to the protected person in question a plan.

(2) In relation to any works which will or may be situated on, over, under or within 25 metres measured in any direction of any apparatus, or involve embankment works within 25 metres of any apparatus, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a material statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) The undertaker shall not commence the construction or renewal of any works to which sub-paragraph (2) applies until:

- (a) the protected person has given written approval of the plan so submitted;
- (b) the protected person has confirmed in writing that it is satisfied in its reasonable opinion that the undertaker has provided acceptable security and provided evidence that the undertaker shall maintain such acceptable security for the construction period of the onshore works authorised by the Order; and
- (c) the protected person has confirmed in writing that it is satisfied in its reasonable opinion that the undertaker has procured acceptable insurance and provided evidence that it shall maintain such acceptable insurance for the construction period of the onshore works authorised by the Order.

(4) Any approval of the protected person required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) shall not be unreasonably withheld.

(5) In relation to a work to which sub-paragraph (2) applies, the protected person 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.

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or, as relevant, sub paragraph (4), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

(7) Where any protected person requires any protective works to be carried out either by the protected person itself or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected person's satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part thereof) and the protected person in question shall give 56 days' notice of such works from the date of approval of a plan submitted in line with sub-paragraph (1) or (4) (except in an emergency).

(8) If a protected person in accordance with sub-paragraph (5) or (7) and 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 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case shall the execution of any works commence until 56 days have lapsed following submission of any new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it shall give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker shall comply with National Grid's policies for development near overhead lines EN43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

10.—(1) Subject to the following provisions of this paragraph, the undertaker shall repay to a protected person on demand all charges, costs and expenses reasonably incurred by that protected person in, or in connection with, the inspection, removal, relaying or replacing, 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 in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that the protected person elects to use compulsory purchase powers to acquire any necessary rights under 7(3) all costs incurred as a result of such action;

- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, 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 in this Schedule.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, 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 settled by arbitration in accordance with **article 42** (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, the amount which apart from this sub-paragraph would be payable to the protected person in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not 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 shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a protected person in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the protected person any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Schedule 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 it) in the course of carrying out such works, including without limitation works carried out by the undertaker or a protected person under this Schedule or any subsidence resulting from any of these works), 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 a protected person, or there is any interruption in any service provided, or in the supply of any goods, by any protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

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

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

(3) 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 neglect or default of a protected person, its officers, servants, contractors or agents.

Ground subsidence monitoring scheme in respect of protected person's apparatus

12.—(1) No works within 100 metres of any apparatus or alternative apparatus which are capable of interfering with or risking damage to a protected person's apparatus shall commence until a scheme for monitoring ground subsidence ("referred to in this paragraph as the monitoring scheme") has been submitted to and approved by the relevant protected person, such approval not to be unreasonably withheld.

(2) The ground subsidence monitoring scheme described in sub-paragraph (1) shall set out—

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for the protected person's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

(3) The monitoring scheme required by sub paragraph (1) and (2) must be submitted within 56 days prior to the commencement of any works authorised by this Order or comprised within the authorised development. Any requirements of the protected person will be notified within 28 days of receipt of the monitoring scheme. Thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") shall be submitted to the protected person for approval, such approval not to be unreasonably withheld; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person save that the protected persons retains the right to carry out any further necessary protective works for the safeguarding of their apparatus and can recover any such costs in line with paragraph (10).

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority pursuant to Part 3 of Schedule 1 (requirements) the undertaker may submit a revised monitoring scheme or mitigation scheme to the protected person for its approval, such approval not to be unreasonably withheld; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

Enactments and agreements

13. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a protected person in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

14. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a protected person requires the removal of apparatus under paragraph 7(2) or a protected person makes requirements for the protection or alteration of apparatus under paragraph (9), the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of the protected person's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and the protected person shall use best endeavours to co-operate with each other for those purposes.

Access

15. If in consequence of an agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

16. Save for differences or disputes arising under paragraph 7(2),7(4), 8(1) and 9 any difference or dispute arising between the undertaker and a protected person under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with **article 42** (arbitration).

Transfer of Agreements

17. Regardless of any provision in this Order (including **article 7**), the undertaker shall not transfer to another person any or all of the benefit of the provisions of this Order unless such person has first entered into a direct covenant in favour of the protected person on terms acceptable to the protected person (acting reasonably) requiring the transferee to observe and perform the obligations under any agreement entered into by the undertaker with the protected person in relation to or pursuant to the provisions in this Schedule.

PART 3
FOR THE PROTECTION OF SOUTH EASTERN POWER NETWORKS PLC

Application

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

Interpretation

2. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of the protected undertaker to enable the protected undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" in respect of the protected undertaker means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that protected undertaker;

"commence" has the same meaning as in **article 2** but for the purposes of this Schedule 12 any works whatsoever which are near to or may affect apparatus of the protected undertaker shall be included within this definition and for the avoidance of doubt this includes works for the diversion or laying of services;

"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, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the protected undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus

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

"protected undertaker" means South Eastern Power Networks PLC;

"undertaker" has the same meaning as in **article 2**.

3. Except for paragraphs 4 (apparatus in stopped up streets), and 8 (retained apparatus: protection), this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected undertaker are regulated by the provisions of Part 3 of the 1991 Act (as if this Order did not apply).

Apparatus of Protected Undertakers in stopped up streets

4.—(1) Where any street is stopped up under this Order, any protected undertaker whose apparatus is in the street or accessed via that street shall be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to the protected undertaker legal easements reasonably satisfactory to the specified protected undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of **article 16** (temporary stopping up of streets), or otherwise under this Order, a protected undertaker shall be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway 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 highway subject always to the undertaking of works by the undertaker authorised by this Order.

Acquisition of land

5. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any apparatus or override any easement or other interest of a protected undertaker or acquire any land or other interest of a protected undertaker or create any new rights over the same otherwise than by agreement such agreement not to be unreasonably withheld or delayed.

Removal of apparatus

6.—(1) If, in the exercise of agreement reached in accordance with paragraph 5 above or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part of this Schedule and any right of a protected undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the protected undertaker in question in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the protected undertaker in question 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus 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 a protected undertaker reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the protected undertaker to their satisfaction (taking into account 7(1) below) the necessary facilities and rights for:

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) 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 protected undertaker in question shall, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an 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 protected undertaker to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the protected undertaker in question and the undertaker both acting reasonably.

(5) The protected undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected undertaker of any such facilities and rights as are referred to in sub-paragraph (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.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a protected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and the protected undertaker in question and shall be no less favourable on the whole to the protected undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by the protected undertaker.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected undertaker under 7(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the protected 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 in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to that protected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: Protection

8.—(1) Not less than 56 days before commencing the execution of any works authorised by 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(2) or otherwise, the undertaker shall submit to the protected undertaker in question a plan.

(2) In relation to any works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the protected undertaker under sub-paragraph (1) shall be detailed including a material statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

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

(4) Any approval of the protected undertaker required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) shall not be unreasonably withheld or delayed;
- (c) shall be deemed to be granted 14 days after the expiry of the 56 day period if no response to the request for approval has been provided within that initial 56 day period.

(5) In relation to a work to which sub-paragraph (2) applies, the protected 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.

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (4), as amended from time to time by agreement between the undertaker and the protected undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the protected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected undertaker shall be entitled to watch and inspect the execution of those works.

(7) Where any protected undertaker requires any protective works to be carried out either by the protected undertaker itself or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected undertaker's reasonable satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part thereof) and the protected undertaker in question shall give 56 days' notice of such works from the date of approval of a plan submitted in line with sub-paragraph (1) or (4) (except in an emergency).

(8) If a protected undertaker in accordance with sub-paragraph (5) or (7) and 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 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case shall the execution of any works commence until 56 days have lapsed following submission of, any new plan instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan; and

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it shall give to the protected undertaker in question notice as soon as is reasonably practicable and a plan of those works and shall comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

Expenses

9.—(1) Subject to the following provisions of this paragraph, the undertaker shall repay to a protected undertaker on demand all charges, costs and expenses reasonably incurred by that protected undertaker in, or in connection with, the inspection, removal, relaying or replacing, 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 in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that the protected undertaker elects to use compulsory purchase powers to acquire any necessary rights under 6(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, 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 in this Schedule.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, 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 settled by arbitration in accordance with **article 42** (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, the amount which apart from this sub-paragraph would be payable to the protected undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not 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 shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a protected undertaker in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the protected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

10.—(1) The undertaker, in the case of the powers conferred by this Order shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected undertaker and subject to sub-paragraphs (2) and (3) of this paragraph 10, if by reason or in consequence of the execution of any works in, on, under or over any land purchased, held, appropriated or used under this Order, any damage is caused to any 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 a protected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any protected undertaker, the undertaker must bear and pay the cost reasonably incurred by that protected undertaker in making good such damage or restoring the supply, and must

- (a) make reasonable compensation to that protected undertaker for any other expenses, loss, damages, penalty or costs incurred by the protected undertaker; and

- (b) indemnify the protected undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or incurred by, the protected undertaker,

by reason or in consequence of any such damage or interruption; and the fact that any act or thing may have been done by the protected undertaker on behalf the undertaker or in accordance with plans approved by the protected undertaker or in accordance with any requirement of the protected undertaker or under its supervision does not, subject to sub-paragraph (2), excuse the undertaker from any liability under the provisions of this paragraph.

(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 a protected undertaker, its officers, servants, contractors or agents.

(3) A protected 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, which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

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

Co-operation

12. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a protected undertaker requires the removal of apparatus under paragraph 6(2) or a protected undertaker makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of the protected undertaker's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and the protected undertaker shall co-operate with each other for those purposes.

Access

13. If in consequence of an agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

14. Save for differences or disputes arising under paragraph 6(2), 6(4), 7(1) and 8 any difference or dispute arising between the undertaker and a protected undertaker under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected undertaker, be determined by arbitration in accordance with **article 42** (arbitration).

PART 4

FOR THE PROTECTION OF SOUTHERN WATER SERVICES LIMITED

Application

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

Interpretation

2. In this part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of the protected undertaker to enable the protected undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

- (a) mains, pipes or other apparatus belonging to or maintained by the protected undertaker for the purposes of water supply; and
- (b) any drain or works vested in the protected undertaker under the Water Industry Act 1991^(a); and
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given by the protected undertaker under section 102(4) of that Act or an agreement to adopt made by the protected undertaker under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 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, across, along, over or upon land; and

"protected undertaker" means Southern Water Services Limited.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of Land

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker shall not acquire any apparatus otherwise than by agreement.

Removal of Apparatus

5.—(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, that apparatus shall not be removed under this Part of this Schedule and any right of a protected undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the protected undertaker in question.

(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, it shall give to the protected undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus 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 a protected undertaker reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the protected 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 protected undertaker in question shall, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use all reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the protected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with **article 42** (arbitration).

^a 1991 c. 56.

(5) The protected undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with **article 42** (arbitration), and after the grant to the protected undertaker of any such facilities and rights as are referred to in sub-paragraph (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), if the undertaker gives notice in writing to the protected undertaker 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, that work, instead of being executed by the protected undertaker, shall be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the protected undertaker.

(7) Nothing in sub-paragraph (6) shall authorise 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 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a protected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and the protected undertaker in question or in default of agreement settled by arbitration in accordance with **article 42** (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 arbitrator less favourable on the whole to the protected 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 shall make such provision for the payment of compensation by the undertaker to that protected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: Protection

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker shall submit to the protected undertaker a plan, section and description of the works to be executed.

(2) Those works shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the protected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected undertaker shall be entitled to watch and inspect the execution of those works.

(3) Any requirements made by a protected undertaker under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a protected undertaker in accordance with sub-paragraph (3) and 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 6 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph shall preclude 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(6) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to the protected undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and shall comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker shall repay to a protected undertaker the reasonable expenses incurred by that protected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, 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,

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 by arbitration in accordance with **article 42** (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, the amount which apart from this sub-paragraph would be payable to the protected undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(4) An amount which apart from this sub-paragraph would be payable to a protected undertaker in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the protected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(2), any damage is caused to any 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 a protected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any protected undertaker, the undertaker shall—

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

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 the protected undertaker, its officers, servants, contractors or agents.

(3) The protected undertaker shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise 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.

Enactments and agreements

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

PART 5

FOR THE PROTECTION OF GAS PIPELINE OWNERS, PIPELINE OWNERS AND SEWERAGE UNDERTAKERS

1. For the protection of the undertakers referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and the protected person concerned, or otherwise provided for in this Order, have effect.

2. In this part of this Schedule—

"acceptable insurance" means a policy of public liability/ third party liability insurance effected and maintained by the undertaker with insurance cover of not less than £15,000,000.00 (fifteen million pounds) per event for the construction period of the onshore works pursuant to this order with an internationally recognised insurer of repute operating in the London and worldwide insurance market, such policy shall include (but without limitation):

- (a) the protected person named as an insured party under the policy;
- (b) a cross liabilities clause; and
- (c) a waiver of subrogation in favour of the protected person.

"alternative apparatus" means alternative apparatus adequate to enable the protected person in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

- (a) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (b) in the case of a person maintaining a private pipeline affected by the undertaker's works, any pipes or other apparatus belonging to or maintained by that person ; and
- (c) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the protected person under 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) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 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

"protected person" means—

- (a) a gas transporter within the meaning of Part 1 of the Gas Act 1986^(a);
- (b) a person maintaining a private pipeline affected by the undertaker's works; and
- (c) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker shall not acquire any apparatus otherwise than by agreement.

(a) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

5.—(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, that apparatus shall not be removed under this part of this Schedule and any right of a protected person to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the protected person in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the protected person in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus 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 shall, subject to sub-paragraph (3), afford to the protected person 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) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the protected person in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(4) The protected person in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42, and after the grant to the protected person of any such facilities and rights as are referred to in sub-paragraph (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.

(5) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the protected person in question 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, that work, instead of being executed by the protected person, shall be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the protected person.

(6) Nothing in sub-paragraph (5) shall authorise 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 300 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a protected person facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and the protected person in question or in default of agreement settled by arbitration in accordance with article 42 (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 arbitrator less favourable on the whole to the protected person 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 shall make such provision for the payment of compensation by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker shall:

- (a) submit to the protected person in question a plan, section and description of the works to be executed; and
- (b) confirm in writing that it is satisfied in its reasonable opinion it has procured acceptable insurance and provide evidence that it shall maintain such acceptable insurance for the construction period of the works authorised by the Order that affect the protected person.

(2) Those works shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

(3) Any requirements made by a protected person under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an protected person in accordance with sub-paragraph (3) and 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 6 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph shall preclude 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(6) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to the protected person in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and shall comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, the undertaker shall repay to a protected person the reasonable expenses incurred by that protected person in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, 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,

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 by arbitration in accordance with article 42 (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, the amount which apart from this sub-paragraph would be payable to the protected person in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not 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 cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a protected person in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the protected person any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(2), any damage is caused to any 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 a protected person, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker shall—

- (a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that protected person 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, subject to a maximum total liability to the protected person of £15,000,000.00 (fifteen million pounds).

(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 a protected person, its officers, servants, contractors or agents.

(3) A protected person shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise 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.

10. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a protected person in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Schedule 13

Article 11

Deemed licence under Marine and Coastal Access Act 2009 – array

PART 1

LICENSED MARINE ACTIVITIES

1.—(1) In this licence—

"the 2008 Act" means the Planning Act 2008;

"the 2009 Act" means the Marine and Coastal Access Act 2009;

"Annex 1 Habitat" means such habitat as defined under the EU Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora;

"array" means Work Nos. 1 and 2, as set out in paragraph 2(2) of this licence;

"authorised deposits" means the substances and articles specified in paragraph 2(4);

"authorised scheme" means Work Nos. 1 and 2 described in paragraph 2 of this licence or any part of that work;

"Cefas" means the Centre for Environment, Fisheries and Aquaculture Science;

"commence" means the first carrying out of any part of the licensed activities, save for pre-construction surveys and monitoring;

"condition" means a condition in Part 2 of this licence;

"enforcement officer" means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

"environmental statement" means the document certified as the environmental statement by the decision-maker for the purposes of this Order and submitted with the application on 1 March 2013;

"export cables" means Work No. 3;

"gravity base foundation" means a structure principally of concrete, steel or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or skirts, including associated sea bed preparation, scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side and work platforms and equipment;

"IBGS (Inward Battered Guide Structure) foundation" means a jacket-type concrete, steel or steel and concrete structure which is pre-fabricated with three tubular raking legs, which is installed over a pre-driven central pile, with up to three smaller diameter raking piles driven through the legs to pin the foundation to the seabed, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

"jacket foundation" means a jacket/lattice type structure constructed of concrete, steel or steel and concrete which is fixed to the seabed at three or more points with driven or pre-installed piles or suction cans, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

"JNCC" means the Joint Nature Conservation Committee;

"Kingfisher Fortnightly Bulletin" means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

"LAT" means lowest astronomical tide;

"licensed activities" means the activities specified in Part 1 of this licence;

"maintain" includes inspect, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works and any component part of any wind turbine generator or offshore substation described in Part 1 of **Schedule 1** (authorised development) to the extent assessed in the environmental statement; and "maintenance" shall be construed accordingly;

"Marine Management Organisation" or "MMO" means the body created under the Marine and Coastal Access Act 2009 which is responsible for the monitoring and enforcement of this licence;

"major storm event" means a greater than 1 in 10 year wave event within the Order limits seaward of MHWS in terms of wave height;

"MCA" means the Maritime and Coastguard Agency;

"mean high water springs" or "MHWS" means the highest level which spring tides reach on average over a period of time;

"monopile foundation" means a steel, concrete, or steel and concrete large diameter pile, typically cylindrical, driven and/or drilled into the seabed, including associated scour protection, transition piece, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

"notice to mariners" includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen's harbourmasters, government departments and harbour and pilotage authorities;

"offshore substation" means an offshore platform constructed of steel or concrete or steel and concrete with single or multiple decks housing major electrical equipment including high voltage transformers, switchgear, control rooms, cabling and busbars, lightning protection masts, communications masts, cable management, back-up generators, fuel storage, emergency accommodation, workshops and stores, helihoist facilities, cranes and other associated electrical and ancillary equipment;

"Order limits" means the limits shown on the works plan within which the authorised scheme may be carried out, whose grid coordinates seaward of MHWS are set out in paragraph 3 of Part 1 of this Schedule;

"the Order" means the Rampion Offshore Wind Farm Order 201X;

"outline cable burial plan" means the document certified as the outline cable burial plan for the purposes of this Order;

"outline diver mitigation plan" means the document certified as the outline diver mitigation plan for the purposes of this Order;

"outline fisheries engagement plan" means the document certified as the outline fisheries engagement plan for the purposes of this Order;

"outline offshore written scheme of archaeological investigation" means the document certified as the outline offshore written scheme of archaeological investigation by the decision-maker for the purposes of this Order;

"piling restriction plan" means the plan certified as the piling restriction plan by the decision-maker for the purposes of this Order;

"suction can" means a steel cylindrical structure which is fixed to the base of the foundation and partially penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

"suction caisson foundation" means a large diameter steel cylindrical structure which partially penetrates the seabed and remains in place using its own weight and a hydrostatic pressure differential, attached to a vertical central column which supports the transition piece, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access platform(s) and equipment;

"Trinity House" means The Corporation of Trinity House of Deptford Strond;

"tripod foundation" means a steel or concrete or steel and concrete jacket/lattice type structure consisting of three main legs linked by cross-braces supporting a single central support for the transition piece which is fixed to the seabed with driven or pre-installed piles or suction cans, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

"undertaker" means E.ON Climate & Renewables UK Rampion Offshore Wind Limited;

"vessel" includes every description of vessel, however propelled or moved, and includes a jack-up barge, floating crane, non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

"wind turbine generator" or "WTG" means a structure comprising a tower, rotor with three horizontal axis blades connected at the hub, nacelle containing mechanical and electrical equipment, ancillary equipment including access ladders and platforms, lifts, cables, corrosion protection systems, maintenance equipment, helihoist facilities and other associated equipment, fixed to a foundation;

"works plan" means the plan certified as the Works plan by the decision-maker for the purposes of the Order.

(2) A reference to any statute, order, regulation or similar instrument shall be construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated:

- (a) all times shall be taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates shall be taken to be latitude and longitude degrees and minutes to two decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence shall be:

(a) Marine Management Organisation

Offshore Licensing Team
Lancaster House
Hampshire Court
Newcastle Business Park
Newcastle upon Tyne
NE4 7YH
Tel: 0300 123 1032
Email: marine.consents@marinemanagement.org.uk;

(b) Marine Management Organisation (Coastal Office)

South Eastern Coastal Office
Shoreham Office
Pilots' Watch House
Basin Road South
Portslade
West Sussex
BN41 1WD
Tel: 01273 419 122
Email: shoreham@marinemanagement.org.uk;

(c) Trinity House

Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;

(d) The United Kingdom Hydrographic Office

Admiralty Way
Taunton
Somerset
TA1 2DN

- Tel: 01823 337 900;
- (e) Marine and Coastguard Agency
Navigation Safety Branch
Bay 2/04
Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 023 8032 9191;
- (f) Centre for Environment, Fisheries and Aquaculture Science
Pakefield Road
Lowestoft
Suffolk
NR33 0HT
Tel: 01502 562 244
- (g) Natural England
Area 1C, Nobel House
17 Smith Square
London
SW1P 2AL
Tel: 0300 060 4911;
- (h) English Heritage
Eastgate Court
195-205 High Street
Guildford
GU1 3EH
Tel: 01483 252 057;
- (i) JNCC
Inverdee House
Baxter Street
Aberdeen
AB11 9QA
Tel: 01224 266 550.

Details of licensed marine activities

2.—(1) This licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act, subject to the conditions:

- (a) the deposit at sea of the substances and articles specified in paragraph (3) below;
- (b) the construction of works in or over the sea and/or on or under the sea bed;
- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation; and
- (d) the dredging of the seabed and the disposal of 167,995m³ of inert material of natural origin produced during the drilling installation of or seabed preparation for foundations for Work No. 1 and Work No. 2 within the area hatched red on the works plan.

(2) The works referred to in (1)(b) comprise:

Work No. 1

- (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 700 MW comprising up to 175 wind turbine generators each fixed to the seabed by one of six foundation types (namely, monopile foundation, tripod foundation, jacket foundation, IBGS foundation, gravity base foundation or suction caisson foundation), fitted with rotating blades and situated within the area hatched red on the works plan and further comprising (b) below;
- (b) a network of cables laid underground within the area hatched red on the works plan between the WTGs, and Work No. 2, for the transmission of electricity and electronic communications between these different structures and including one or more cable crossings;

and associated development within the meaning of section 115(2) of the 2008 Act comprising:

Work No. 2 – Up to two substations fixed to the seabed by one of three foundation types (namely monopile foundation, gravity base foundation or jacket foundation) and situated within the area hatched red on the works plan;

and in connection with such Work Nos. 1 and 2 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence;

and in connection with such Work Nos. 1 and 2, works comprising:

- (a) temporary landing places or other means of accommodating vessels in the construction and/or maintenance of the authorised scheme; and
 - (b) buoys, beacons, fenders and other navigational warning or ship impact protection works.
- (3) The substances or articles authorised for deposit at sea are:
- (a) steel, copper and aluminium;
 - (b) stone and rock;
 - (c) concrete;
 - (d) sand and gravel;
 - (e) plastic and synthetic;
 - (f) material extracted from within the Order limits seaward of MHWS during construction drilling or seabed preparation;
 - (g) marine coatings, other chemicals (where in accordance with condition 6(1)) and timber.

3. The grid coordinates for the authorised scheme are specified below:

Coordinates for the Order limits seaward of MHWS

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
<i>1</i>	50 41 11.353 N	0 21 55.854 W	<i>6</i>	50 37 08.170 N	0 15 42.138 W
<i>2</i>	50 42 24.826 N	0 13 45.700 W	<i>7</i>	50 38 13.351 N	0 16 17.087 W
<i>3</i>	50 40 39.194 N	0 04 26.227 W	<i>8</i>	50 37 03.353 N	0 20 36.092 W
<i>4</i>	50 39 31.712 N	0 01 28.060 W	<i>9</i>	50 41 23.104 N	0 20 37.738 W
<i>5</i>	50 38 34.922 N	0 09 02.884 W			

4. This licence shall remain in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

5. The provisions of Section 72 of the 2009 Act shall apply to this licence save that the provisions of Section 72(7) relating to the transfer of the licence shall only apply to a transfer not falling within **article 7** (benefit of the Order).

PART 2

Conditions

Design parameters

1.—(1) Subject to paragraph (2), no wind turbine generator forming part of the authorised scheme shall—

- (a) exceed a height of 210 metres when measured from LAT to the tip of the vertical blade;
- (b) exceed a height of 124 metres when measured from LAT to the height of the centreline of the generator shaft forming part of the hub;
- (c) exceed a rotor diameter of 172 metres;
- (d) be less than 600 metres from the nearest WTG in either direction perpendicular to the approximate prevailing wind direction (crosswind) or be less than 600 metres from the nearest WTG in either direction which is in line with the approximate prevailing wind direction (downwind);
- (e) have a distance of less than 22 metres between the lowest point of the rotating blade of the wind turbine and MHWS.

(2) References to the location of a wind turbine generator are references to the centre point of the tower of that WTG.

(3) The layout of all wind turbine generators and offshore substations within the Order limits shall comprise an overall contiguous arrangement of offshore structures. Within such overall contiguous arrangement there shall be no more than three contiguous groupings each comprising wind turbine generators of a similar size and each such grouping shall be laid out in a regular pattern such that along each row axis within the grouping there is an approximately equal distance between wind turbine generators.

(4) For the purposes of this requirement, "similar size" means a wind turbine with a difference in rotor diameter of less than 15%.

(5) No wind turbine generator or offshore substation forming part of the authorised scheme shall be erected within the area hatched black on the works plan (the "exclusion zone for wind turbine generators and offshore substations"), whose coordinates are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
50 40 55.069 N	000 05 50.015 W	50 40 55.069 N
50 40 39.195 N	000 04 26.231 W	50 40 39.195 N
50 39 31.715 N	000 01 28.063 W	50 39 31.715 N
50 38 35.394 N	000 08 59.148 W	50 38 35.394 N

2.—(1) The total number of offshore substations forming part of the authorised scheme shall not exceed two.

(2) The dimensions of any offshore substation forming part of the authorised scheme (excluding masts) shall not exceed 45 metres in height when measured from LAT, 45 metres in length and 45 metres in width.

(3) Each offshore substation shall have no more than one supporting foundation.

3.—(1) The total length of the cables comprising Work No. 1(b) shall not exceed 230 kilometres.

(2) The total amount of cable protection for the cables comprising Work No. 1(b) shall not exceed 0.23km².

4.—(1) Each monopile foundation forming part of the authorised scheme shall not have a diameter greater than 6.5 metres.

(2) Each gravity base foundation forming part of the authorised scheme shall not have—

- (a) a diameter at the level of the seabed which is greater than 34 metres;
- (b) a base height, where there is a flat base, which is greater than 10 metres above the level of the seabed.

(3) Each jacket foundation forming part of the authorised scheme shall not have—

- (a) a width spacing between each leg at the level of the seabed which is greater than 32 metres;
- (b) a leg diameter which is greater than 2.6 metres;
- (c) a pile diameter which is more than 2.6 metres;
- (d) more than one pile per leg;
- (e) more than four legs.

(4) Each tripod foundation forming part of the authorised scheme shall not have—

- (a) a pile diameter which is greater than 2.8 metres;
- (b) more than one pile per leg;
- (c) more than three legs;
- (d) a column diameter which is greater than 4.5 metres.

(5) Each suction caisson foundation forming part of the authorised scheme shall not have—

- (a) a diameter at the level of the seabed which is more than 35 metres;
- (b) a column diameter which is more than 6.5 metres.

(6) Each IBGS foundation forming part of the authorised scheme shall not have:

- (a) a width spacing between each leg at the level of the seabed which is greater than 26 metres;
- (b) a central pile diameter which is greater than 2.8 metres; and
- (c) a raking pile diameter which is greater than 1.5 metres.

(7) No more than 156 monopile foundations shall be installed as part of the authorised scheme.

(8) No more than 124 jacket foundations shall be installed as part of the authorised scheme.

(9) No more than 124 IBGS foundations shall be installed as part of the authorised scheme.

(10) No more than 165 tripod foundations shall be installed as part of the authorised scheme.

(11) No more than 80 gravity base foundations shall be installed as part of the authorised scheme.

(12) No more than 118 suction caisson foundations shall be installed as part of the authorised scheme.

(13) The total amount of scour protection for the WTGs and offshore substations forming part of the authorised scheme shall not exceed 831,000 m³.

Notifications and inspections

5.—(1) The undertaker shall ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to:
 - (i) all agents and contractors notified to the MMO in accordance with condition 10; and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 10;
- (b) Within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above shall provide a completed confirmation form to the MMO confirming that they have read and will comply with the terms of the conditions of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 10 are permitted to carry out the licensed activities.

(3) Copies of this licence shall also be available for inspection at the following locations—

- (a) the undertaker's registered address;

- (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in paragraph (1)(a) shall be available for inspection by an authorised enforcement officer at the locations set out in paragraph 3(b) above.

(5) The undertaker shall provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker shall inform the MMO in writing at least five working days prior to the commencement of the licensed activities or any part of them.

(7) Prior to the commencement of the licensed activities or any part of them the undertaker shall publish in the Kingfisher Fortnightly Bulletin details of the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part.

(8) The undertaker shall ensure that a notice to mariners is issued at least 10 working days prior to the commencement of the licensed activities or any part of them advising of the start date of Work Nos. 1 and 2 and the expected vessel routes from the local construction ports to the relevant location.

(9) The undertaker shall ensure that the notices to mariners are updated and reissued at weekly intervals during construction activities and within 5 days of any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under condition 8(b). Copies of all notices shall be provided to the MMO.

(10) The undertaker shall notify—

- (a) the Hydrographic Office of both the commencement (within two weeks), progress and completion (within two weeks) of the authorised scheme in order that all necessary amendments to nautical charts are made; and
- (b) the MMO, MCA and Trinity House within two weeks once the authorised scheme is completed and any required lighting or marking has been established.

Navigational practice, safety and emergency response

5A.—(1) No part of the authorised scheme shall commence until the Secretary of State, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and adequately addressed all MCA recommendations contained within MGN 371 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes including full details of the Emergency Co-operation Plans (ERCoP) for the construction, operation and decommissioning as appropriate to the authorised scheme.

(2) The undertaker will prepare and implement a project-specific Active Safety Management System, taking account of safety and mitigation measures as referred to in the navigation risk assessment in the environmental statement.

Aids to navigation

5B.—(1) The undertaker shall at or near the authorised scheme during the whole period of the construction, operation, alteration, replacement or decommissioning of the authorised scheme exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation, as Trinity House may from time to time direct.

(2) The undertaker shall ensure that timely and efficient notices to mariners and other navigational warnings of the position and nature of the authorised scheme seaward of MHWS, are issued during and after the period of construction, alteration, replacement or decommissioning of the authorised scheme, such information to be promulgated to mariners in the shipping and fishing industry as well as to recreational mariners in accordance with conditions 5(8) and (9).

(3) The undertaker shall notify Trinity House, in writing, as soon as reasonably practicable of both the progress and completion of the authorised scheme seaward of MHWS and any aids for navigation established from time to time.

(4) The undertaker shall provide reports on the availability of aids to navigation periodically as requested by Trinity House.

(5) In case of injury to, or destruction or decay of, the authorised scheme or any part thereof the undertaker shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

Lighting

5C.—(1) The undertaker shall colour all structures yellow from at least highest astronomical tide to a height directed by Trinity House, or shall colour the structure as directed by Trinity House from time to time.

(2) Subject to paragraph (1) above, unless the Secretary of State otherwise directs, the undertaker shall ensure that the wind turbine generators shall be painted light grey (colour code RAL 7035).

Chemicals, drilling and debris

6.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised scheme, including any chemical agents placed within any monopile void, shall be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

(2) The undertaker shall ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances shall be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) Where foundation drilling works are proposed, in the event that any system other than water-based mud is proposed the MMO's written approval in relation to the proposed disposal of any arisings shall be obtained before the drilling commences, which may also require a marine licence.

(5) The undertaker shall ensure that any debris arising from the construction of the authorised scheme or temporary works placed below MHWS are removed on completion of the authorised scheme.

(6) At least two months prior to the commencement of the licensed activities the undertaker shall submit to the MMO an audit sheet covering all aspects of the construction of the licenced activities or any part of them. The audit sheet shall include details of—

- (a) loading facilities;
- (b) vessels;
- (c) equipment;
- (d) shipment routes;
- (e) working schedules; and
- (f) all components and materials to be used in the construction of the authorised scheme.

(7) The audit sheet shall be maintained throughout the construction of the authorised scheme (or relevant part) and any changes notified immediately in writing to the MMO which must give written approval prior to any change being implemented.

(8) In the event that the MMO becomes aware that any of the materials on the audit sheet cannot be accounted for it shall require the undertaker to carry out a side scan sonar survey to plot all obstructions across the relevant area(s) within the Order limits seaward of MHWS where construction works and related activities related to those materials have been carried out and, if the initial survey does not locate the missing materials, over such wider area as the MMO may reasonably request. Local fishermen shall be invited to send a representative to be present during the survey. Any new obstructions that the MMO believes to be associated with the authorised scheme shall be removed at the undertaker's expense.

(9) The undertaker shall inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(10) The undertaker shall ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations, and drilling mud shall be disposed of within the area hatched red on the works plan. Any other materials shall be screened out before disposal at this site.

Comment [I24]: MMO stated in its response to Deadline XI that there is insufficient information to designate this disposal site. MMO and the applicant are requested to give an update on this issue.

(11) The undertaker shall ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(12) In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker shall report the loss to the MMO's District Marine Office within 48 hours and if the MMO shall reasonably consider such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker shall endeavour to locate the material and recover it.

(13) The undertaker shall undertake the methods agreed under condition 8(g)(iii) following the high resolution swath bathymetric survey referred to in condition 14(2)(f). Should any such obstructions resulting from burial of the export cables be identified which, in the reasonable opinion of the MMO, may be considered to interfere with fishing, the undertaker shall take such steps to remove them as the MMO in its reasonable opinion shall require.

(14) The undertaker shall ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(15) The undertaker shall ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team.

Force majeure

7. If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits outside of the Order limits because the safety of human life and/or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit shall be notified to the MMO. The unauthorised deposits shall be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

8. No part of the works at paragraph 2(2) of Part 1 (licensed marine activities) of this Schedule shall commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO—

- (a) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, to be agreed in writing with the MMO in consultation with Trinity House and the MCA which shows—
 - (i) the proposed layout and location and choice of foundation of all WTGs, together with a written statement of how, having regard to other constraints such as ecological effects, safety reasons or engineering and design parameters, the principles identified in Requirement 1 of the DCO have been taken into account.
 - (ii) the height to the tip of the vertical blade; height to the centreline of the generator shaft forming part of the hub; rotor diameter and spacing of all wind turbine generators;
 - (iii) the height, length and width of all offshore substations;
 - (iv) the length and arrangement and location of all cables comprising Work No 1(b);
 - (v) the dimensions of all monopile foundations;
 - (vi) the dimensions of all gravity base foundations;
 - (vii) the dimensions of all jacket foundations;
 - (viii) the dimensions of all tripod foundations;
 - (ix) the dimensions of all suction caisson foundations;
 - (x) the dimensions of all IBGS foundations;
 - (xi) any archaeological exclusion zones identified under condition 8(h)(iv);
 - (xii) any exclusion zones/micrositing requirements identified in any mitigation scheme pursuant to condition 8(j); and
 - (xiii) in plan form, the indicative programming of particular works as set out in the indicative written construction programme to be provided under condition 8(b)(iv),

Comment [I25]: Representations received from Natural England and E.ON in response to Deadline XI suggests that there is agreement with the principle of including either a new requirement, or an amendment to Condition 8 (a)(1) Schedule 13.

However NE and E.ON are not currently agreed as to the best method for including this, or the wording.

In view of the remaining differences between the parties, the ExA proposes a new Requirement – Requirement 1 and an amended Condition 8 (a)(i) in Schedule 13.

This would refer to a supplementary document. This would outline the design principles that the applicant needs to have regard to when designing the layout of the proposed array, so that the visual effects are limited as far as reasonably practicable, taking into account other constraints such as ecological effects, safety reasons or engineering or design parameters.

In relation to the supplementary document, to secure compliance with it, it has been included in Article 40 and in Article 2.

Comments are invited from the applicant and IPs.

Deleted: the indicative proposed layout and location and choice of foundation of all WTGs (together with a written statement of how, having regard to other constraints such as ecological effects, safety reasons or engineering and design parameters, the view from the Sussex Heritage Coast, in terms of separation or limiting of the horizontal field of view, has been taken into account);

- to ensure conformity with the description of Works No. 1 and compliance with conditions 1-4 above.
- (b) A construction and monitoring programme to include details of—
- (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant, delivery of materials and installation works;
 - (iii) proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with conditions 8(h), 12, 13 and 14. The pre-construction survey programme and pre-construction survey methodologies shall be submitted to the MMO for written approval by the MMO in consultation with Natural England and JNCC at least four months prior to the commencement of any survey works detailed within; and
 - (iv) an indicative written construction programme for all wind turbine generators and cables comprised in the works at paragraph 2(2) of Part 1 (licensed marine activities) of this Schedule (insofar as not shown in (ii) above).
- (c) A construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—
- (i) drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation works;
 - (ii) WTG and offshore substations' location and installation, including scour protection;
 - (iii) cable installation;
 - (iv) contractors;
 - (v) vessels and vessels transit corridors;
 - (vi) proposals to reduce the impacts of noise and vibration from construction works;
 - (vii) a protocol for routing vessels to and from the wind farm to minimise impacts on marine mammals and marine users;
 - (viii) associated works;
 - (ix) areas within the Order limits in which construction activity will take place; and
 - (x) a schedule of planned maintenance (to be updated every three years to reflect any revised maintenance schedules, technologies or techniques).
- (d) A project environmental management and monitoring plan to include details of—
- (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents during construction and operation of the authorised scheme in relation to all activities carried out;
 - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) waste management plan and disposal arrangements;
 - (iv) the appointment and responsibilities of a fisheries liaison officer and an environmental liaison officer; and
 - (v) a fisheries liaison plan (in accordance with the fisheries liaison strategy within the outline fisheries engagement plan) to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to condition 5 and to address the interaction of the licensed activities with fishing activities during construction and operation.
- (e) A scour protection management and cable armouring plan, in accordance with the outline scour protection management and cable armouring plan, providing details of the need, type, sources, quantity and installation methods for scour protection.
- (f) In the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol to be agreed in writing with the MMO in consultation with Natural England and JNCC and following current best practice as advised by the statutory nature conservation agencies, to include—
- (i) identification of a Marine Mammal Monitoring Zone (MMMZ);
 - (ii) appointment of an appropriate number of suitably qualified marine mammal observer(s);

- (iii) methods for the detection of marine mammals within the MMMZ whether visually (by the marine mammal observer(s)) or acoustically using Passive Acoustic Monitoring equipment or other means of detection;
 - (iv) a reporting methodology to enable efficient communication between the marine mammal observer(s) and the person responsible for approving commencement of piling;
 - (v) an appropriate soft start procedure whereby piling activities do not commence until an agreed time has elapsed and during which marine mammals have not been detected within the MMMZ;
 - (vi) where appropriate, methods for the application of acoustic deterrent devices.
- (g) A cable specification and installation plan, to include—
- (i) technical specification of offshore cables below MHWS, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
 - (ii) a detailed cable burial plan for the Order limits seaward of MHWS (in accordance with the outline cable burial plan), incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques; and
 - (iii) appropriate methods such as a trawl or drift net to be deployed along the offshore subsea cables between Work Nos. 1 and 2, following the survey referred to in condition 14(2)(f) to assess any seabed obstructions resulting from burial of the cables.
- (h) A written scheme of archaeological investigation in relation to the Order limits seaward of mean low water in accordance with the outline offshore written scheme of archaeological investigation, industry good practice and after consultation with English Heritage to include—
- (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
 - (ii) a methodology for any further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
 - (iii) analysis and reporting of survey data, and timetable, which is to be submitted to the MMO within four months of any survey being completed;
 - (iv) delivery of any mitigation including, where necessary, archaeological exclusion zones;
 - (v) monitoring during and post construction, including a conservation programme for finds;
 - (vi) archiving of archaeological material, inclusive of any completed and agreed archaeological reports produced through the written scheme of archaeological investigation which are to be deposited by the undertaker within a public archive in accordance with the OASIS (Online Access to the Index of archaeological investigationS') system;
 - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme; and
 - (viii) provision for a plan showing, in relation to the plan agreed pursuant to condition 8(a), the indicative proposed location of installation vessels for construction of Work No. 1 and Work No. 2.
- (i) A diver mitigation plan, which accords with the outline diver mitigation plan, to include details of—
- (i) an appropriate soft start procedure;
 - (ii) appointment of a diver liaison officer; and
 - (iii) a diver communication plan, to include notification of the timing and duration of piling activities.
- (j) A mitigation scheme for any Annex 1 features identified by the survey referred to in condition 12(2)(a).

9.—(1) Any archaeological reports produced in accordance with condition 8(h)(iii) are to be agreed with English Heritage.

(2) Each programme, statement, plan, protocol or scheme required to be approved under condition 8 shall be submitted for approval at least four months prior to the intended start of construction, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(3) The licensed activities shall be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 8, unless otherwise agreed in writing by the MMO.

Reporting of engaged agents, contractors and vessels

10.—(1) The undertaker shall provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; and
- (b) each week during the construction of the authorised scheme a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the licensed activities.

(2) Any changes to the supplied details shall be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Equipment and operation of vessels engaged in licensed activities

11.—(1) All vessels employed to perform the licensed activities shall be constructed and equipped to be capable of the proper performance of such activities in accordance with the conditions of this licence and (save in the case of remotely operated vehicles or vessels) shall comply with paragraphs (2) to (7) below.

(2) All motor powered vessels shall be fitted with—

- (a) electronic positioning aid to provide navigational data;
- (b) radar;
- (c) echo sounder; and
- (d) multi-channel VHF.

(3) No radio beacon or radar beacon operating on the marine frequency bands shall be installed or used without the prior written approval of the Secretary of State.

(4) All vessels' names or identification shall be clearly marked on the hull or superstructure.

(5) All vessels shall exhibit signals in accordance with the requirements of the International Regulations for the Prevention of Collisions at Sea.

(6) All communication on VHF working frequencies shall be in English.

(7) No vessel shall engage in the licensed activities until all the equipment specified in paragraph (2) is fully operational.

Pre-construction monitoring and surveys

12.—(1) The undertaker shall, in discharging condition 8(b), submit details for written approval by the MMO in consultation with Natural England and JNCC of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report; and—

- (a) the survey proposals shall specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals shall ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and shall make clear what post-construction comparison is intended and the justification for this being required.

(2) The pre-construction surveys referred to in condition 12(1) shall unless otherwise agreed with the MMO have due regard to, but not be limited to, the need to undertake—

- (a) a survey(s), in combination with data derived from condition 12(2)(c) to determine the location and extent of any benthic Annex 1 Habitat in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works;
- (b) a survey(s) to determine the location, extent and composition of any benthic habitats of the area(s) within the Order limits in which it is proposed to carry out construction works of conservation, ecological and or economic importance;

- (c) a high resolution swath-bathymetric survey(s) to include a 100% coverage and side scan sonar survey of the area(s) within the Order limits in which it is proposed to carry out construction works, including a 500m buffer around the site of each works and inclusive of seabed anomalies or sites of historical or archaeological interest that lie within that 500m buffer;
- (d) a survey(s) to determine the location and extent of the mussel beds in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works; and
- (e) a survey(s) to determine the extent of fish and shellfish populations and spawning activity within the Order limits in which it is proposed to carry out construction works, and any wider areas where appropriate.

(3) The undertaker shall carry out the surveys agreed under paragraph (1) and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO in consultation with Natural England and JNCC.

Construction monitoring

13.—(1) Unless otherwise agreed, the undertaker shall, in discharging condition 8(b), submit details for approval by the MMO in consultation with Natural England and JNCC of any proposed surveys or monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The survey proposals shall specify each survey's objectives. In any event, such monitoring shall, where driven or part-driven pile foundations are proposed to be used, include monitored background noise measurements (during periods when piling is not being undertaken) and measurements of noise generated by the installation of the first four foundations of each discrete foundation type to be installed, unless otherwise agreed in writing with the MMO.

(2) The undertaker shall carry out the surveys approved under paragraph (1) and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with Natural England and JNCC.

(3) The results of the initial noise measurements shall be provided to the MMO within four weeks of the installation of the last of the four piles. The assessment of this report by the MMO shall determine whether any further noise monitoring is required.

Post construction surveys

14.—(1) The undertaker shall, in discharging condition 8(b), submit details for written approval by the MMO in consultation with Natural England and JNCC of proposed post-construction surveys, including methodologies and timings, and a proposed format, content and timings for providing reports on the results at least four months prior to the commencement of any survey works detailed within. The survey proposals shall specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) The post construction surveys referred to in condition 14(1) shall unless otherwise agreed with the MMO have due regard to but not be limited to the need to undertake—

- (a) one high resolution swath bathymetric survey and side scan sonar survey per annum around a sample of adjacent turbines to a distance of three turbine spacings to assess any changes in seabed topography. For this purpose the undertaker will prior to the first such survey submit a desk based assessment (which takes account of all factors which influence scour) to identify the sample of adjacent turbines with greatest potential for scour. The survey will be used to validate the desk based assessment: further surveys may be required if there are significant differences between the modelled scour and recorded scour;
- (b) a survey(s) to determine the location, extent and composition of any benthic habitats of the area(s) within the Order limits in which construction works were carried out of conservation, ecological and or economic importance to validate predictions made in the environmental statement;
- (c) dependent on the outcome of the survey undertaken in condition 12(2)(a) above, a survey(s) to determine the effects of construction activity on any benthic Annex 1 Habitat in whole or in part inside the area(s) within the Order limits;
- (d) a survey(s) of the extent of fish and shellfish populations and spawning activity within the Order limits in which construction works were carried out, and any wider areas where appropriate, for comparison against the results of the baseline survey carried out under condition 12(2)(e); and

- (e) a sidescan sonar and bathymetry survey(s) at the locations within the Order limits in which construction works were carried out after the first occurrence of a 1 in 10 year wave event within the Order limits seaward of MHWS in terms of wave height measured from the Greenwich Light Vessel Waverider buoy located at 50°23'.100N, 000°00'.00E;
- (f) one high resolution swath bathymetric survey across the area(s) within the Order limits in which construction works were carried out to assess any changes in bedform topography and such further monitoring as may be agreed to ensure scour equilibrium has been reached and that the cables have been buried.

(3) The undertaker shall carry out the surveys agreed under paragraph (1) for 3 years post-construction, which could be non-consecutive years, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with Natural England and JNCC.

Black bream spawning

15.—(1) No pile driving works for monopile foundations shall be carried out by or on behalf of the undertaker as part of or in relation to the authorised scheme between 15 April and 30 June each year, unless the MMO provides written confirmation to the undertaker beforehand that such works can take place in all or in a specified part of the Order limits, or during this period or part of this period.

(2) No pile driving works for jacket foundations (pin piles) shall be carried out by or on behalf of the undertaker as part of or in relation to the authorised scheme between 15 April and 30 June each year within the black bream restriction zone unless the MMO provides written confirmation to the undertaker beforehand that such works can take place in all or in a specified part of the zone, or during this period or part of this period.

(3) In considering whether to provide the confirmation referred to in (1) or (2) above, the MMO shall have regard to any report or reports provided to the MMO by or on behalf of the undertaker relating to such matters as additional baseline information piling management measures, installation techniques or noise propagation modelling.

(4) In this condition, "black bream restriction zone" means the area shaded blue on the piling restriction plan whose coordinates are set out below—

ID	Latitude DMS	Longitude DMS	East UTM30	North UTM30
1	50° 41' 11.4 N	0° 21' 55.9 W	686090.8	5618273.1
20	50° 37' 44.2 N	0° 20' 49.2 W	687627.8	5611921.2
21	50° 42' 21.0 N	0° 14' 11.0 W	695130.0	5620758.1

Herring spawning

16.—(1) No pile driving works for monopile foundations shall be carried out by or on behalf of the undertaker as part of or in relation to the authorised scheme between 20 November and 15 January each year, unless the MMO provides written confirmation to the undertaker beforehand that such works can take place in all or in a specified part of the Order limits, or during this period or part of this period.

(2) No pile driving works for jacket foundations (pin piles) shall be carried out by or on behalf of the undertaker as part of or in relation to the authorised scheme between 20 November and 15 January each year unless the MMO provides written confirmation to the undertaker beforehand that such works can take place in all or in a specified part of the Order limits, or during this period or part of this period.

(3) In considering whether to provide the confirmation referred to in (1) or (2) above, the MMO shall have regard to any report or reports provided to the MMO by or on behalf of the undertaker relating to such matters as additional baseline information, reduced spatial restrictions, piling management measures, installation techniques or noise propagation modelling.

Restrictions on monopile foundations

17.—(1) Subject to paragraph (2), pile driving shall not occur for more than one monopile at any one time within the Order limits.

Comment [I26]: MMO, in response to Action Point 16 from the ISH on 6 December, proposed that the following underlined wording should be added "The undertaker shall carry out the surveys agreed under paragraph (1) for 3 years post-construction, subject to MMO review, which could be non-consecutive years, and provide the agreed reports in the agreed format in accordance with the agreed timetable as detailed in 8(b)(iii)". The applicant is requested to explain why they do not agree that this wording should be included? NE is requested to give its view.

(2) In the case of the proposed simultaneous piling of two or more monopiles within the Order limits, the proposal together with a calculation of projected noise measurements and contours within the scope of the assessment in the environmental statement shall be provided to the MMO and such simultaneous piling shall not take place until the proposal has been approved by the MMO.

Monitoring of shoreline sediment morphology

18.—(1) The undertaker shall carry out monitoring of shoreline sediment morphology during operation of the array and the export cables, unless otherwise agreed with the MMO in consultation with Natural England and JNCC.

(2) This monitoring shall be carried out in conjunction with established regional coastal process monitoring programmes or, in the event that such programmes are discontinued, in accordance with a coastal process monitoring strategy between the shoreline limits of Beachy Head and Selsey Bill to be approved by the MMO in consultation with Natural England and JNCC.

Decommissioning

19. This licence does not permit the decommissioning of the authorised scheme. No authorised decommissioning activity shall commence until a decommissioning programme in accordance with an approved programme under Section 105(2) of the 2004 Act has been submitted to the Secretary of State for approval. Furthermore, at least four months prior to carrying out such works the undertaker shall notify the MMO of the proposed decommissioning activity to establish whether a marine licence is required for such works.

Schedule 14

Article 11

Deemed licence under Marine and Coastal Access Act 2009 – export cables

PART 1

LICENSED MARINE ACTIVITIES

1.—(1) In this licence—

"the 2008 Act" means the Planning Act 2008;

"the 2009 Act" means the Marine and Coastal Access Act 2009;

"Annex 1 Habitat" means such habitat as defined under the EU Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora;

"array" means Work Nos. 1 and 2;

"authorised deposits" means the substances and articles specified in paragraph 2(4);

"authorised scheme" means Work No. 3 described in paragraph 2 of this licence or any part of those works;

"Cefas" means the Centre for Environment, Fisheries and Aquaculture Science;

"commence" means the first carrying out of any part of the licensed activities, save for pre-construction surveys and monitoring;

"condition" means a condition in Part 2 of this licence;

"enforcement officer" means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

"environmental statement" means the document certified as the environmental statement by the decision-maker for the purposes of this Order and submitted with the application on 1 March 2013;

"export cables" means Work No. 3, as set out in paragraph 2(2) of this licence;

"JNCC" means the Joint Nature Conservation Committee;

"Kingfisher Fortnightly Bulletin" means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

"LAT" means lowest astronomical tide;

"licensed activities" means the activities specified in Part 1 of this licence;

"maintain" includes inspect, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works and any component part of any wind turbine generator or offshore substation described in Part 1 of **Schedule 1** (authorised development) to the extent assessed in the environmental statement; and "maintenance" shall be construed accordingly;

"Marine Management Organisation" or "MMO" means the body created under the Marine and Coastal Access Act 2009 which is responsible for the monitoring and enforcement of this licence;

"major storm event" means a greater than 1 in 10 year wave event within the Order limits seaward of MHWS in terms of wave height;

"MCA" means the Maritime and Coastguard Agency;

"mean high water springs" or "MHWS" means the highest level which spring tides reach on average over a period of time;

"notice to mariners" includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen's harbourmasters, government departments and harbour and pilotage authorities;

"Order limits" means the limits shown on the works plan within which the authorised scheme may be carried out, whose grid coordinates seaward of MHWS are set out in paragraph 3 of Part 1 of this Schedule;

"outline cable burial plan" means the document certified as the outline cable burial plan for the purposes of this Order;

"outline diver mitigation plan" means the document certified as the outline diver mitigation plan for the purposes of this Order;

"outline fisheries engagement plan" means the document certified as the outline fisheries engagement plan for the purposes of this Order;

"outline offshore written scheme of archaeological investigation" means the document certified as the outline offshore written scheme of archaeological investigation by the decision-maker for the purposes of this Order;

"the Order" means the Rampion Offshore Wind Farm Order 201X;

"Trinity House" means The Corporation of Trinity House of Deptford Strond;

"undertaker" means E.ON Climate & Renewables UK Rampion Offshore Wind Limited;

"vessel" includes every description of vessel, however propelled or moved, and includes a jack-up barge, floating crane, non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

"works plan" means the plan certified as the works plan by the decision-maker for the purposes of the Order.

(2) A reference to any statute, order, regulation or similar instrument shall be construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated:

- (a) all times shall be taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates shall be taken to be latitude and longitude degrees and minutes to two decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence shall be:

(a) Marine Management Organisation

Offshore Licensing Team

Lancaster House

Hampshire Court

Newcastle Business Park

Newcastle upon Tyne

NE4 7YH

Tel: 0300 123 1032

Email: marine.consents@marinemanagement.org.uk;

(b) Marine Management Organisation (Coastal Office)

South Eastern Coastal Office

Shoreham Office

Pilots' Watch House

Basin Road South

Portslade

West Sussex

BN41 1WD

Tel: 01273 419 122

Email: shoreham@marinemanagement.org.uk;

(c) Trinity House

Tower Hill

- London
EC3N 4DH
Tel: 020 7481 6900;
- (d) The United Kingdom Hydrographic Office
Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;
- (e) Marine and Coastguard Agency
Navigation Safety Branch
Bay 2/04
Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 023 8032 9191;
- (f) Centre for Environment, Fisheries and Aquaculture Science
Pakefield Road
Lowestoft
Suffolk
NR33 0HT
Tel: 01502 562 244
- (g) Natural England
Area 1C, Nobel House
17 Smith Square
London
SW1P 2AL
Tel: 0300 060 4911;
- (h) English Heritage
Eastgate Court
195-205 High Street
Guildford
GU1 3EH
Tel: 01483 252 057;
- (i) JNCC
Inverdee House
Baxter Street
Aberdeen
AB11 9QA
Tel: 01224 266 550.

Details of licensed marine activities

2.—(1) This licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act, subject to the conditions:

- (a) the deposit at sea of the substances and articles specified in paragraph (3) below;

- (b) the construction of works in or over the sea and/or on or under the sea bed;
- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation.

(2) The works referred to in (1)(b) comprise:

Work No. 3 – A connection or connections between the offshore substations comprising Work No. 2 and between Work No. 2 and MHWS consisting of cables laid underground along routes within the Order limits seaward of MHWS and including one or more cable crossings;

and in connection with such Work No. 3 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence;

and in connection with such Work No. 3, works comprising:

- (a) temporary landing places or other means of accommodating vessels in the construction and/or maintenance of the authorised scheme; and
- (b) buoys, beacons, fenders and other navigational warning or ship impact protection works.

(3) The substances or articles authorised for deposit at sea are:

- (a) steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the Order limits seaward of MHWS during construction drilling or seabed preparation;
- (g) marine coatings, other chemicals (where in accordance with condition 6(1)) and timber.

3. The grid coordinates for the authorised scheme are specified below:

Coordinates for the Order limits seaward of MHWS

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
<i>1</i>	50 41 11.353 N	0 21 55.854 W	<i>10</i>	50 45 18.565 N	0 19 44.382 W
<i>2</i>	50 42 24.826 N	0 13 45.700 W	<i>11</i>	50 48 30.636 N	0 20 55.626 W
<i>3</i>	50 40 39.194 N	0 04 26.227 W	<i>12</i>	50 48 46.775 N	0 20 10.230 W
<i>4</i>	50 39 31.712 N	0 01 28.060 W	<i>13</i>	50 48 57.172 N	0 20 16.314 W
<i>5</i>	50 38 34.922 N	0 09 02.884 W	<i>14</i>	50 49 03.572 N	0 19 54.019 W
<i>6</i>	50 37 08.170 N	0 15 42.138 W	<i>15</i>	50 48 55.616 N	0 19 44.170 W
<i>7</i>	50 38 13.351 N	0 16 17.087 W	<i>16</i>	50 49 05.768 N	0 18 57.100 W
<i>8</i>	50 37 03.353 N	0 20 36.092 W	<i>17</i>	50 45 11.462 N	0 14 39.325 W
<i>9</i>	50 41 23.104 N	0 20 37.738 W	<i>18</i>	50 41 42.907 N	0 10 03.133 W

4. This licence shall remain in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

5. The provisions of Section 72 of the 2009 Act shall apply to this licence save that the provisions of Section 72(7) relating to the transfer of the licence shall only apply to a transfer not falling within **article 7** (benefit of the Order).

PART 2

Conditions

Design parameters

1. *[Not used]*

2. *[Not used]*

3.—(1) The total length of the cables comprising Work No.3A shall not exceed 92 kilometres.

(2) The total amount of cable protection for the cables comprising Work No. 3A shall not exceed 0.092km².

(3) No export cables forming part of the authorised development shall be located within the area hatched green on the works plan (the "exclusion zone for export cables"), whose coordinates are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
<i>A-1</i>	50.794617	-0.289684
<i>A-2</i>	50.733185	-0.217759
<i>A-3</i>	50.733212	-0.289783

4. *[Not used]*

Notifications and inspections

5.—(1) The undertaker shall ensure that—

(a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—

(i) all agents and contractors notified to the MMO in accordance with condition 10; and

(ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 10;

(b) Within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above shall provide a completed confirmation form to the MMO confirming that they have read and will comply with the terms of the conditions of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 10 are permitted to carry out the licensed activities.

(3) Copies of this licence shall also be available for inspection at the following locations—

(a) the undertaker's registered address;

(b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and

(c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in paragraph (1)(a) shall be available for inspection by an authorised enforcement officer at the locations set out in paragraph 3(b) above.

(5) The undertaker shall provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker shall inform the MMO in writing at least five working days prior to the commencement of the licensed activities or any part of them.

(7) Prior to the commencement of the licensed activities or any part of them the undertaker shall publish in the Kingfisher Fortnightly Bulletin details of the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part.

(8) The undertaker shall ensure that a notice to mariners is issued at least 10 working days prior to the commencement of Work No.3 advising of the start date of Work No. 3 and the route of the subsea export cables.

(9) The undertaker shall ensure that the notices to mariners are updated and reissued at weekly intervals during construction activities and within 5 days of any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under condition 8(b). Copies of all notices shall be provided to the MMO.

(10) The undertaker shall notify—

- (a) the Hydrographic Office of both the commencement (within two weeks), progress and completion (within two weeks) of the authorised scheme in order that all necessary amendments to nautical charts are made; and
- (b) the MMO, MCA and Trinity House within two weeks once the authorised scheme is completed and any required lighting or marking has been established.

Navigational practice, safety and emergency response

5A.—(1) No part of the authorised scheme shall commence until the Secretary of State, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and adequately addressed all MCA recommendations contained within MGN 371 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes including full details of the Emergency Co-operation Plans (ERCoP) for the construction, operation and decommissioning as appropriate to the authorised scheme.

(2) The undertaker will prepare and implement a project-specific Active Safety Management System, taking account of safety and mitigation measures as referred to in the navigation risk assessment in the environmental statement.

Aids to navigation

5B.—(1) The undertaker shall at or near the authorised scheme during the whole period of the construction, operation, alteration, replacement or decommissioning of the authorised scheme exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation, as Trinity House may from time to time direct.

(2) The undertaker shall ensure that timely and efficient notices to mariners and other navigational warnings of the position and nature of the authorised scheme seaward of MHWS, are issued during and after the period of construction, alteration, replacement or decommissioning of the authorised scheme, such information to be promulgated to mariners in the shipping and fishing industry as well as to recreational mariners in accordance with conditions 5(8) and (9).

(3) The undertaker shall notify Trinity House, in writing, as soon as reasonably practicable of both the progress and completion of the authorised scheme seaward of MHWS and any aids for navigation established from time to time.

(4) The undertaker shall provide reports on the availability of aids to navigation periodically as requested by Trinity House.

(5) In case of injury to, or destruction or decay of, the authorised scheme or any part thereof the undertaker shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

Chemicals, drilling and debris

6.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised scheme shall be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

(2) The undertaker shall ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances shall be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) *[Not used]*

(5) The undertaker shall ensure that any debris arising from the construction of the authorised scheme or temporary works placed below MHWS are removed on completion of the authorised scheme.

(6) At least two months prior to the commencement of the licensed activities the undertaker shall submit to the MMO an audit sheet covering all aspects of the construction of the licenced activities or any part of them. The audit sheet shall include details of—

- (a) loading facilities;
- (b) vessels;
- (c) equipment;
- (d) shipment routes;
- (e) working schedules; and
- (f) all components and materials to be used in the construction of the authorised scheme.

(7) The audit sheet shall be maintained throughout the construction of the authorised scheme (or relevant part) and any changes notified immediately in writing to the MMO which must give written approval prior to any change being implemented.

(8) In the event that the MMO becomes aware that any of the materials on the audit sheet cannot be accounted for it shall require the undertaker to carry out a side scan sonar survey to plot all obstructions across the relevant area(s) within the Order limits seaward of MHWS where construction works and related activities related to those materials have been carried out and, if the initial survey does not locate the missing materials, over such wider area as the MMO may reasonably request. Local fishermen shall be invited to send a representative to be present during the survey. Any new obstructions that the MMO believes to be associated with the authorised scheme shall be removed at the undertaker's expense.

(9) *[Not used]*

(10) *[Not used]*

(11) The undertaker shall ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(12) In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker shall report the loss to the MMO's District Marine Office within 48 hours and if the MMO shall reasonably consider such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker shall endeavour to locate the material and recover it.

(13) The undertaker shall undertake the methods agreed under condition 8(g)(iii) following the high resolution swath bathymetric survey referred to in condition 14(2)(f). Should any such obstructions resulting from burial of the export cables be identified which, in the reasonable opinion of the MMO, may be considered to interfere with fishing, the undertaker shall take such steps to remove them as the MMO in its reasonable opinion shall require.

(14) The undertaker shall ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team.

Force majeure

7. If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits outside of the Order limits because the safety of human life and/or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit shall be notified to the

MMO. The unauthorised deposits shall be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

8. No part of the works at paragraph 2(2) of Part 1 (licensed marine activities) of this Schedule shall commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO—

- (a) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, to be agreed in writing with the MMO in consultation with Trinity House and the MCA which shows—
 - (i) the length and arrangement and location of all cables comprising Work No. 3;
 - (ii) any archaeological exclusion zones identified under condition 8(h)(iv);
 - (iii) any exclusion zones/micrositing requirements identified in any mitigation scheme pursuant to condition 8(j); and
 - (iv) in plan form, the indicative programming of particular works as set out in the indicative written construction programme to be provided under condition 8(b)(iv),
to ensure conformity with the description of Work No. 3 and compliance with condition 3 above.
- (b) A construction and monitoring programme to include details of—
 - (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant, delivery of materials and installation works;
 - (iii) proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with conditions 8(h), 12, 13 and 14. The pre-construction survey programme and pre-construction survey methodologies shall be submitted to the MMO for written approval by the MMO in consultation with Natural England and JNCC at least four months prior to the commencement of any survey works detailed within; and
 - (iv) an indicative written construction programme for all cables comprised in the works at paragraph 2(2) of Part 1 (licensed marine activities) of this Schedule (insofar as not shown in (ii) above).
- (c) A construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—
 - (i) cable installation, including cable landfall;
 - (ii) contractors;
 - (iii) vessels and vessels transit corridors;
 - (iv) proposals to reduce the impacts of noise and vibration from construction works;
 - (v) a protocol for routing vessels to and from the wind farm to minimise impacts on marine mammals and marine users;
 - (vi) associated works;
 - (vii) areas within the Order limits in which construction activity will take place; and
 - (viii) a schedule of planned maintenance (to be updated every three years to reflect any revised maintenance schedules, technologies or techniques).
- (d) A project environmental management and monitoring plan to include details of—
 - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents during construction and operation of the authorised scheme in relation to all activities carried out;
 - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) waste management plan and disposal arrangements;
 - (iv) the appointment and responsibilities of a fisheries liaison officer and an environmental liaison officer; and

- (v) a fisheries liaison plan (in accordance with the fisheries liaison strategy within the outline fisheries engagement plan) to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to condition 5 and to address the interaction of the licensed activities with fishing activities during construction and operation.
- (e) A scour protection management and cable armouring plan, in accordance with the outline scour protection management and cable armouring plan, providing details of the need, type, sources, quantity and installation methods for scour protection.
- (f) *[Not used]*
- (g) A cable specification and installation plan, to include—
 - (i) technical specification of offshore cables below MHWS, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
 - (ii) a detailed cable burial plan for the Order limits seaward of MHWS (in accordance with the outline cable burial plan), incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques;
 - (iii) appropriate methods such as a trawl or drift net to be deployed along the offshore subsea export cables between the array and mean low water mark, following the survey referred to in condition 14(2)(a) to assess any seabed obstructions resulting from burial of the export cables; and
 - (iv) proposals to minimise impacts on cuttlefish spawning.
- (h) A written scheme of archaeological investigation in relation to the Order limits seaward of mean low water in accordance with the outline offshore written scheme of archaeological investigation, industry good practice and after consultation with English Heritage (and, if relevant West Sussex County Council) to include—
 - (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
 - (ii) a methodology for any further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
 - (iii) analysis and reporting of survey data, and timetable, which is to be submitted to the MMO within four months of any survey being completed;
 - (iv) delivery of any mitigation including, where necessary, archaeological exclusion zones;
 - (v) monitoring during and post construction, including a conservation programme for finds;
 - (vi) archiving of archaeological material, inclusive of any completed and agreed archaeological reports produced through the written scheme of archaeological investigation which are to be deposited by the undertaker within a public archive in accordance with the OASIS (Online Access to the Index of archaeological investigationS') system;
 - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme; and
 - (viii) provision for a plan showing, in relation to the plan agreed pursuant to condition 8(a), the indicative proposed location of installation vessels for construction of Work No. 3.
- (i) *[Not used]*
- (j) A mitigation scheme for any Annex 1 features identified by the survey referred to in condition 12(2)(a).

9.—(1) Any archaeological reports produced in accordance with condition 8(h)(iii) are to be agreed with English Heritage (and, if relevant West Sussex County Council).

(2) Each programme, statement, plan, protocol or scheme required to be approved under condition 8 shall be submitted for approval at least four months prior to the intended start of construction, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(3) The licensed activities shall be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 8, unless otherwise agreed in writing by the MMO.

Reporting of engaged agents, contractors and vessels

10.—(1) The undertaker shall provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; and
- (b) each week during the construction of the authorised scheme a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the licensed activities.

(2) Any changes to the supplied details shall be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Equipment and operation of vessels engaged in licensed activities

11.—(1) All vessels employed to perform the licensed activities shall be constructed and equipped to be capable of the proper performance of such activities in accordance with the conditions of this licence and (save in the case of remotely operated vehicles or vessels) shall comply with paragraphs (2) to (7) below.

(2) All motor powered vessels shall be fitted with—

- (a) electronic positioning aid to provide navigational data;
- (b) radar;
- (c) echo sounder; and
- (d) multi-channel VHF.

(3) No radio beacon or radar beacon operating on the marine frequency bands shall be installed or used without the prior written approval of the Secretary of State.

(4) All vessels' names or identification shall be clearly marked on the hull or superstructure.

(5) All vessels shall exhibit signals in accordance with the requirements of the International Regulations for the Prevention of Collisions at Sea.

(6) All communication on VHF working frequencies shall be in English.

(7) No vessel shall engage in the licensed activities until all the equipment specified in paragraph (2) is fully operational.

Pre-construction monitoring and surveys

12.—(1) The undertaker shall, in discharging condition 8(b), submit details for written approval by the MMO in consultation with Natural England and JNCC of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report; and—

- (a) the survey proposals shall specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals shall ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and shall make clear what post-construction comparison is intended and the justification for this being required.

(2) The pre-construction surveys referred to in condition 12(1) shall unless otherwise agreed with the MMO have due regard to, but not be limited to, the need to undertake—

- (a) a survey(s), in combination with data derived from condition 12(2)(c) to determine the location and extent of any benthic Annex 1 Habitat in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works;
- (b) a survey(s) to determine the location, extent and composition of any benthic habitats of the area(s) within the Order limits in which it is proposed to carry out construction works of conservation, ecological and or economic importance;
- (c) a high resolution swath-bathymetric survey(s) to include a 100% coverage and side scan sonar survey of the area(s) within the Order limits in which it is proposed to carry out construction works, including a 500m buffer around the site of each works and inclusive of seabed anomalies or sites of historical or archaeological interest that lie within that 500m buffer;

- (d) a survey(s) to determine the location and extent of the mussel beds in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works; and
- (e) a survey(s) to determine the extent of fish and shellfish populations and spawning activity within the Order limits in which it is proposed to carry out construction works, and any wider areas where appropriate.

(3) The undertaker shall carry out the surveys agreed under paragraph (1) and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO in consultation with Natural England and JNCC.

Construction monitoring

13.—(1) Unless otherwise agreed, the undertaker shall, in discharging condition 8(b), submit details for approval by the MMO in consultation with Natural England and JNCC of any proposed surveys or monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The survey proposals shall specify each survey's objectives.

(2) The undertaker shall carry out the surveys approved under paragraph (1) and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with Natural England and JNCC.

Post construction surveys

14.—(1) The undertaker shall, in discharging condition 8(b), submit details for written approval by the MMO in consultation with Natural England and JNCC of proposed post-construction surveys, including methodologies and timings, and a proposed format, content and timings for providing reports on the results at least four months prior to the commencement of any survey works detailed within. The survey proposals shall specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) The post construction surveys referred to in condition 14(1) shall unless otherwise agreed with the MMO have due regard to but not be limited to the need to undertake—

- (a) one high resolution swath bathymetric survey across the area(s) within the Order limits in which construction works were carried out to assess any changes in bedform topography and such further monitoring as may be agreed to ensure scour equilibrium has been reached and that the cables have been buried;
- (b) a survey(s) to determine the location, extent and composition of any benthic habitats of the area(s) within the Order limits in which construction works were carried out of conservation, ecological and or economic importance to validate predictions made in the environmental statement;
- (c) dependent on the outcome of the survey undertaken in condition 12(2)(a) above, a survey(s) to determine the effects of construction activity on any benthic Annex 1 Habitat in whole or in part inside the area(s) within the Order limits;
- (d) a survey(s) of the extent of fish and shellfish populations and spawning activity within the Order limits in which construction works were carried out, and any wider areas where appropriate, for comparison against the results of the baseline survey carried out under condition 12(2)(e); and
- (e) a sidescan sonar and bathymetry survey(s) at the locations within the Order limits in which construction works were carried out after the first occurrence of a 1 in 10 year wave event within the Order limits seaward of MHWS in terms of wave height measured from the Greenwich Light Vessel Waverider buoy located at 50°23'.100N, 000°00'.00E.

(3) The undertaker shall carry out the surveys agreed under paragraph (1) for 3 years post-construction, which may be non-consecutive years, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with Natural England and JNCC.

Decommissioning

15. This licence does not permit the decommissioning of the authorised scheme. No authorised decommissioning activity shall commence until a decommissioning programme in accordance with an approved programme under Section 105(2) of the 2004 Act has been submitted to the Secretary of State for

Comment [I27]: MMO, in response to Action Point 16 from the ISH on 6 December, proposed that the following underlined wording should be added "*The undertaker shall carry out the surveys agreed under paragraph (1) for 3 years post-construction, subject to MMO review, which could be non-consecutive years, and provide the agreed reports in the agreed format in accordance with the agreed timetable as detailed in 8(b)(iii).*". The applicant is requested to explain why they do not agree that this wording should be included? NE is requested to give its view.

approval. Furthermore, at least four months prior to carrying out such works the undertaker shall notify the MMO of the proposed decommissioning activity to establish whether a marine licence is required for such works.

EXPLANATORY NOTES

(This note is not part of the Order)

This Order grants development consent for, and authorises E.ON Climate & Renewables UK Rampion Offshore Wind Limited to construct, operate and maintain a generating station on the bed of the English Channel approximately 13 km from the Sussex coast, together with all necessary and associated development. For the purposes of the development that it authorises, E.ON Climate & Renewables UK Rampion Offshore Wind Limited is authorised by the Order compulsorily or by agreement to purchase land and rights in land to use land, as well as to override easements and other rights. The Order also provides a defence in proceedings in respect of statutory nuisance and to discharge water. The Order imposes requirements in connection with the development for which it grants development consent.

The Order also grants deemed marine licences for the marine licensable activities, being the deposit of substances and articles and the carrying out of works involved in the construction of the generating station and associated development. The deemed marine licences impose conditions in connection with the deposits and works for which they grant consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with **article 40** (certification of plans, etc) of this Order may be inspected free of charge at the offices of Worthing Borough Council at [•], Adur District Council at [•], Horsham District Council at [•] and Mid Sussex District Council at [•].