

East Anglia THREE
Offshore Windfarm

East Anglia THREE

Applicant's response to compliance with PINS' Advice Notes (AN13 and AN15)

Document Reference – Deadline 1/DCO ISH/AN13
& AN15 Note

Applicant's response to guidance in PINS' Advice Notes, AN13 and AN15

This document records the Applicant's consideration of PINS' Advice Notes AN13 and AN15. AN15 is reviewed first because its guidance is more detailed.

For purposes of this document, the draft East Anglia THREE Offshore Wind Farm Order is referred to as "the draft DCO"; the following Development Consent Orders are referred to as "the previous offshore DCOs ":

- East Anglia ONE Offshore Wind Farm Order 2014;
- Burbo Bank Extension Offshore Wind Farm Order 2014;
- Walney Extension Offshore Wind Farm Order 2014;
- Hornsea One Offshore Wind Farm Order 2014;
- Dogger Bank Creyke Beck Offshore Wind Farm Order 2015; and
- Dogger Bank Teesside A and B Offshore Wind Farm Order 2015.

The previous offshore DCOs are the most up to date source for drafting of Development Consent Orders related to offshore wind farm projects.

This document also cross refers to the Applicant's response to the Schedule of Issues produced by the Examining Authority (ExA) in advance of the first DCO Issue Specific Hearing. That document will be submitted to the ExA along with this response.

1. ADVICE NOTE 15: DRAFTING DEVELOPMENT CONSENT ORDERS

The following sections of AN15 are not dealt with in the table that follows as these sections are considered, save for section 4, to be relevant for future iterations of the draft DCO:

- 4. Authorised development in Wales;
- 13. DCO Revisions;
- 14. Providing DCO audit trail;
- 15. Justifying Approach (Explanatory Memorandum);
- 16. Updating the Explanatory Memorandum; and
- 22. Environmental information for subsequent applications.

ADVICE NOTE 15: DRAFTING DEVELOPMENT CONSENT ORDERS		
Topic	Advice note fifteen: Drafting Development Consent Orders (non-narrative extracts)	Applicant's response
SI template	1.1 Applicants should look at made DCOs published by the same Department as will authorise their DCO to identify that Department's drafting preferences. Before adopting any	The Applicant has reviewed the previous offshore DCOs, and it has identified the Department's drafting preferences. Precedents adopted include the sequencing of Articles in the same manner as the

	<p>precedents, applicants should consider carefully whether they are relevant to or remain appropriate for that particular application or proposed application.</p>	<p>previous offshore DCOs. The Applicant is satisfied that these precedents are appropriate given the similar subject matter of the draft DCO.</p>
	<p>1.2 The application DCOs must be made in the form of a validated Statutory Instrument (SI) if, as is usually the case, it includes “legislation provisions” that for example apply, amend or exclude other statutory provisions. A template is publicly available from the Office for Public Sector Information (OPSI), which contains essential formatting for SIs, and this is expected to be followed by applicants. Applicants will need to obtain access for DCO drafting purposes to the online SI template and associated validation system. The Planning Inspectorate case manager will fill in the relevant application form on behalf of the applicant and submit it to the National Archives. Please contact the Planning Inspectorate in case of any difficulty in obtaining access to the template.</p>	<p>The final draft DCO will be in the form of a validated SI, using the SI template and associated validation system.</p>
	<p>1.3 The applicant’s final draft DCO must be made in the validated SI form, although this is unnecessary for revised versions of the DCO submitted during the examination.</p>	<p>The final draft DCO will be in the form of a validated SI, using the SI template.</p>
<p>Drafting conventions</p>	<p>2.1 provide footnotes in relation to statutory provisions referred to in the SI to provide the user of the SI with information about relevant amendments or extensions to, or applications of, enactments mentioned in the instrument;</p> <p>use gender-neutral drafting (for example avoiding the use of “he” or “she” to refer to the Secretary of State or other persons, unless referring to a particular living individual);</p> <p>provide an adequate preamble with recitation of powers;</p>	<p>The draft DCO has footnotes in relation to the statutory provisions referred to in the SI. These footnotes remain subject to final review to ensure their completeness in number and content. The footnotes have (and will continue to have) appropriate information on amendments – for example, see draft DCO, Article 16(1)(b) regarding the Compulsory Purchase (Vesting Declarations) Act 1981.</p> <p>Gender-neutral drafting has been used with the exception of Articles 33(1) and (33)(2)(b); these Articles refer to the Secretary of State as “he”. The Applicant will replace this gender-positive drafting with gender-neutral references to “the Secretary of State” or delete the reference to “he” where appropriate.</p> <p>The draft DCO has an adequate preamble (on page 5) in line with the previous offshore DCOs, with a recitation of the Secretary of State's</p>

	<p>avoid use of the words “shall” or “will” (because of ambiguity over whether they are an imperative or a statement of future intention); and avoid archaisms (for example “therewith”, “aforesaid”).</p>	<p>powers.</p> <p>The draft DCO has 196 instances of "shall", 56 of "will", 1 of "aforesaid", 3 of "thereto", and 1 of "forthwith". These instances will be amended as appropriate.</p>
	<p>2.2 Before submission to the Planning Inspectorate DCOs should be thoroughly checked for typographical errors, internal consistency and sense and should be checked subsequently whenever changes are made to the DCO during the examination.</p>	<p>The draft DCO was checked for typographical errors, internal consistency and sense; however, some typographical errors may remain in the draft DCO. The draft DCO is subject to ongoing review by the Applicant. Any changes to the draft DCO during examination will be thoroughly checked.</p>
<p>Protective Provisions</p>	<p>3.1 Where agreement on protective provisions has not been reached during pre-application, applicants should as a minimum submit on application the standard protective provision of the relevant party with the amendments that the applicant is seeking to it. Submitting blank schedules is not acceptable.</p>	<p>The draft DCO has adopted protective provisions from the East Anglia ONE Offshore Wind Farm Order 2014, as made by the Secretary of State, for Network Rail, Anglian Water Services Limited, National Grid Gas PLC, and National Grid Electricity Transmission.</p> <p>The draft DCO contains standard protective provisions for electricity, gas, water and sewerage undertakers, and for operators of electronic communications code networks.</p> <p>These protective provisions were considered suitable for the East Anglia ONE project which follows the same route as is proposed for the East Anglia THREE project and were considered to be suitable on that basis.</p> <p>The draft DCO has no blank protective provisions.</p>
	<p>3.2 Applicants should check that protective provisions drafted by others fit in with the terminology and style of the rest of the DCO and are suitably drafted for use in an SI.</p> <p>If protective provisions for different persons are included in different parts of a single schedule, SI drafting requires the numbering of the paragraphs to follow sequentially throughout the schedule and not re-start at “1” with each part (as with all textual schedules in several parts). It would be desirable for this approach to be adopted in the draft DCO submitted with the application and in each amended draft during the examination</p>	<p>The Applicant confirms that the terminology and style of the draft DCO's protective provisions are in line with the previous offshore DCOs where relevant, and are suitably drafted for use in an SI.</p> <p>The protective provisions do provide for different persons and are numbered sequentially.</p>

	where protective provisions are changed.	
	3.3 If (for good reason) applicants prefer to provide a separate schedule for each protected party the paragraph numbering can re-start at paragraph 1 for each schedule.	N/a – each protected party is provided for within the draft DCO's Schedule 8.
References	5.1 References to articles in the DCO or sections of Acts should include the heading of the provision (or other concise, explanatory wording) on the first occasion that the reference appears in each article or each paragraph of a schedule.	The draft DCO does this throughout.
	5.2 Cross-references should be thoroughly audited by the applicant every time the DCO is revised during the examination.	This will be done.
Definitions	6.1 Definitions should be applied consistently throughout the DCO and should be in lower case. Applicants should note that: terms defined in the parent legislation (ie the PA 2008) or in the Interpretation Act 1978 do not need to be redefined in the DCO; the use of different definitions for the same term within different parts of the DCO should be avoided wherever possible (for example setting out two different meanings of “apparatus”). If this is unavoidable, then the definition in the interpretation article 2 should make clear that it is subject to another definition elsewhere in the DCO; and definitions should not be used to try to make substantive provision about what can and cannot be done under a DCO, nor to try to give effect to or introduce schedules.	The draft DCO applies definitions consistently, in the lower case. The draft DCO does not re-define terms defined in the parent legislation save for the use of "statutory undertaker" in Schedule 8 Part 5 with reference to the Electricity Act 1989 and the Gas Act 1986 which is a necessary deviation from that used in the remainder of the draft DCO and is in line with some of the previous offshore DCOs. It should be noted that some of the previous offshore DCOs favour defining the term in the "statutory undertakers" article. The draft DCO does not use different definitions for the same term in different parts of the DCO, except for the double-definition of "cable" or "cables" in Article 2 and Schedule 5. The definition of "cables" in Schedule 5 has been amended to clarify that it applies only to Schedule 5. The draft DCO does not attempt to use definitions as substantive provisions, nor to give effect to or introduce schedules.
	7.1 There should be clear footnotes provided for all Acts, SIs, EU or other international legislation or external documents referenced in a DCO, which must conform to the guidance on	The draft DCO's footnotes (which remain subject to review and amendment as necessary) are clear and in line with the previous offshore DCOs. They conform to the guidance on footnotes in SI
Footnotes		

	<p>footnotes in SI Practice (including, for legislation, by identifying relevant amendments to specific provisions).</p> <p>7.2 This practice should apply throughout the draft DCO and its schedules. This includes any draft deemed marine licence because these also form part of an SI and must therefore meet SI standards.</p> <p>7.3 Applicants must ensure that all footnotes in their final draft DCO as timetabled in the examination are still up to date and reflect preferred practice in the relevant decision-making Department.</p>	<p>Practice.</p> <p>This practice is applied throughout the draft DCO, it has been noted by the Applicant that the term 'not used' is not accepted by the Secretary of State. If considered necessary, the final draft DCO will address this usage which is for the moment retained to assist the ExA in considering the deemed marine licences.</p> <p>The draft DCO's footnotes are subject to ongoing review to ensure this.</p>
Schedules	<p>8.1 Schedules in DCOs must be given effect by an operative article in the main body of the DCO. This may be by an express provision that the schedule is to have effect or by clear implication (such as where the article which grants development consent does so by reference to the schedule which describes the authorised development)</p>	<p>The draft DCO's schedules are given effect by express provisions in the operative articles in the main body of the DCO.</p>
	<p>8.2 Also, to assist the reader in navigating the DCO, schedules should be numbered according to the order they are mentioned in the substantive articles in the DCO.</p>	<p>The draft DCO's schedules are so numbered.</p>
Paragraphs	<p>9.1 Paragraphs should usually consist of a single sentence and applicants are encouraged to avoid the use of long sentences.</p>	<p>The draft DCO follows this guidance where possible and is in line with the previous offshore DCOs.</p>
Numbering	<p>10.1 Numbering within articles and schedules should follow the OPSI guidance. Please see advice above (paragraph 3.2) in</p>	<p>Numbering is consistent with guidance save for where project specific drafting means that a deviation is considered appropriate for reasons</p>

	<p>relation to the numbering of protective provisions where included in DCO multi-part schedules. This practice applies to all textual schedules in several parts.</p>	<p>of consistency and logical drafting. The numbering in the draft DCO's multi-part Schedules 1, 10, 11, 12, 13, 14 and 15 is not sequential for this reason.</p> <p>The numbering in the multi-part Schedule 5 is not sequential, with non-sequential numerical-alphabetical listings from "1. (a)" up to "1. (r)". This is in line with the drafting for the East Anglia ONE Order as approved by the Secretary of State. It is necessary as each row lists the rights relevant to the associated plots and therefore each row should recommence at 1 and follow the logical order previously adopted.</p>
	<p>10.2 Applicants should avoid the use of very long lists where the contents need to be numbered with roman numerals or lettered (for example, sub-divisions of a single numbered Work in schedule 1, where a recent example extended to "(ttt)"). The SI template is unable to cope well with the formatting of such long numbering/lettering.</p>	<p>The draft DCO's Schedule 5 uses such lists with numerical-alphabetical listings from "1. (a)" up to "1. (r)" in line with the made East Anglia ONE Offshore Wind Farm Order 2014.</p>
	<p>10.3 In the font mandated by the template for SIs, the character for the numeral "one" and the lower case equivalent of the letter "L" are indistinguishable from one another visually. When determining a numbering/ lettering scheme (for example, for individual land plots) which also needs to be referred to in the DCO, applicants should use a scheme that does not run the risk of ambiguity between these two characters.</p>	<p>The draft DCO does not run this ambiguity risk because its use of the lower case equivalent of the letter "L" are either as "(l)" or as "l)", and these uses are within clearly alphabetical lists.</p>
Certification articles	<p>11.1 It is not considered appropriate to include in a DCO certification articles wording referring to "any other plans or documents referred to in this Order" since this is insufficiently clear and precise.</p>	<p>The draft DCO does not use this wording.</p>
	<p>11.2 Plans and other documents which are required to be certified such as the land and works plans should be specifically listed in the relevant article. Applicants may wish to set out the titles and numbers of such documents, either in the certification article or, if there are a large number of documents, in a separate schedule or schedules to the DCO.</p>	<p>The draft DCO specifically lists such plans and other documents – see Article 32.</p>

Preambles and explanatory notes	12.1 Draft DCOs should include a preamble, briefly setting out details of the submission, examination and determination of the application, citing relevant statutory provisions.	The draft DCO contains a preamble briefly setting out these matters.
	12.2 Draft DCOs should also, after the schedules, include a brief explanatory note, explaining the purpose of the DCO, and what it would permit the applicant to do if consented. This should also set out where copies of the plans and other documents, to be certified under the DCO, may be inspected and when.	The draft DCO, after the schedules, includes a compliant explanatory note.
Requirements – general considerations	17.2 It is likely that the law and policy relating to planning conditions, imposed on planning permissions under the Town and Country Planning Act 1990 (the TCPA 1990), will generally apply when considering requirements to be imposed in a DCO in relation to the terrestrial elements of a proposed NSIP. Requirements should therefore be precise and enforceable, necessary, relevant to the development and reasonable in all other respects.	The draft DCO's requirements are in line with these principles, and the previous offshore DCOs. Further, as was noted in the DCO Issue Specific Hearing none of the Interested Parties present considered the draft DCO requirements to not be in line with the National Planning Policy Framework's requirements for planning conditions.
Securing mitigation	18.1 Where an application would have a number of adverse impacts that require mitigating, as set out in the accompanying environmental statement (ES), such mitigation measures should generally be secured in draft requirements. Mitigation that is identified in the ES as being required must be capable of being delivered.	The draft DCO's requirements secure the mitigation measures as detailed in the Schedules of Mitigation (Application doc. nos. 6.7 (Onshore) and 6.8 (Offshore)).
Providing flexibility – approving and varying final details	19.1 When preparing the draft DCO, applicants will need to consider carefully which aspects of the proposed development can suitably be left for approval at a later stage by the local planning authority (LPA) and which aspects can or should be fixed by the terms of the DCO. Paragraph 82 of the DCLG pre-application Guidance advises that a requirement may be proposed which allows details of “particular finalised aspects” of a development to be submitted later to the LPA or another body for approval in writing.	This has been considered and drafting is in line with the approved East Anglia ONE Offshore Wind Farm Order with which the relevant local planning authorities are familiar and also with the previous offshore DCOs. Further, as noted during the DCO Issue Specific Hearing there are a number of areas where the LPAs are satisfied with how arrangements secured in the East Anglia One Order are working in practice. Where appropriate, these are listed in the Applicant's response to the Schedule of Issues which was produced by the ExA in advance of the first DCO Issue Specific Hearing

		(Schedule of Issues).
	<p>19.2 In relation to matters that are fixed by the terms of the DCO, changes to a DCO can only be authorised in the prescribed way under section 153 of and schedule 6 to the PA 2008. Furthermore, it is not considered acceptable to circumvent the prescribed process in schedule 6 by seeking to provide another route to approving such changes or variations, by a person other than the Secretary of State who made the DCO, for example by applying the provisions of section 73 and/or section 96A of the TCPA1990.</p>	The draft DCO does not attempt such unacceptable circumnavigation. Further, the Applicant confirmed at the first DCO Issue Specific Hearing that it is no longer considered necessary to modify the East Anglia One Order through the draft DCO, notwithstanding that it is considered that such a power exists for the reasons set out in the Applicant's response to the Schedule of Issues.
	<p>19.3 Therefore, adding a tailpiece such as the one below would not be acceptable because it might allow the LPA to approve a change to the scope of the authorised development which had been applied for and examined and circumvent the statutory process:</p> <ul style="list-style-type: none"> • “The authorised development must be carried out in accordance with the principles set out in application document [x] [within the Order limits] unless otherwise approved in writing” 	The draft DCO does not contain tailpieces. None of the requirements allow for a third party approval to change the scope of the development to circumvent the statutory process or environmental assessment.
	<p>19.4 On the other hand, a requirement might make the development consent conditional on the LPA approving detailed aspects of the development in advance (for example, the details of a landscaping scheme). Where the LPA (or other discharging body) is given power to approve such details it will be acceptable to allow that body to approve a change to details that they had already approved. However, the tailpiece (or other wording) should not allow the LPA to approve details which stray outside the parameters set for the development as part of the examination process and subsequent approval of the Secretary of State.</p>	The draft DCO requirements provide for detailed aspects of construction and traffic management to be approved by the LPA; these approvals do not allow the LPA to approve details outside the parameters of the 2008 Act consenting process, and are in line with the requirements already familiar to the LPAs for the East Anglia Three Project, being based on the East Anglia ONE Offshore Wind Farm Order and other previous offshore DCOs.
Complying with	20.1 A DCO should only authorise works that are within the scope of the environmental impact assessment (EIA) that has	The draft DCO is subject to ongoing review to ensure that it authorises works that are within the EIA scope, including ancillary

EIA requirements	<p>been carried out for the NSIP. For example, when the NSIP includes a generic list of ancillary works all such works should be within the scope of the EIA.</p>	<p>works. The Applicant proposes to make some amendments to parameters, as set out in the Applicant's response to the Schedule of Issues, including an amendment to Schedule 1, Part 3, paragraph 12(5) which sets the "existing ground level" at 57 metres above ordnance datum instead of the correct level that has been assessed, which is 54 metres. Some additional parameters have also been included as set out in the Schedule of Issues (Applicant's Response).</p>
	<p>20.2 Particular care should also be taken when drafting a power to maintain so that it does not authorise works outside of those assessed. Applicants are encouraged to engage in sufficiently early consultation with the appropriate agencies, including where relevant with the Marine Management Organisation (MMO), to seek to agree a definition of maintain and the corresponding maintenance article.</p>	<p>The draft DCO's powers to maintain have been carefully drafted not to authorise works outside those assessed. The definition of "maintain" is also discussed in the Schedule of Issues raised by the ExA. In relation to the Article 2 ("Interpretation") definition of "maintain", the ExA queried whether the draft DCO's definition is too broad, enabling some activities beyond normal definitions of "maintain". The ExA suggested that the draft DCO could give a more limited or simple definition. The Applicant's response to the Schedule of Issues confirms the Applicant's position in relation to this, as discussed in the DCO Issue Specific Hearing, and which the MMO has confirmed it is content with.</p>
Discharging requirements	<p>21.1 Section 120(2)(b) of the PA 2008 allows for requirements to include the obtaining of approvals from the Secretary of State "or any other person". In many cases, the LPA for the area(s) within which the development is situated, is likely to be the relevant "person" from which to obtain such consents. For clarity, such requirements should generally be drafted to identify the relevant LPA or authorities, by name. This could be made clear in the definitions, for example when defining the "relevant planning authority".</p>	<p>The draft DCO does not provide for approvals from "any other person". Further, its Article 2 definition of "relevant planning authority" identifies the relevant authority as follows: <i>"the district planning authority for the area in which the land to which the relevant provision of this Order applies is situated"</i>.</p>
	<p>21.2 Applicants should engage with LPAs and other key stakeholders at the earliest opportunity about the requirements to be included in the DCO and to agree the best approach to discharging the requirements, for example to agree a proportionate timescale for discharge depending on the extent or complexity of detail reserved for subsequent approval.</p>	<p>The Applicant has so engaged with LPAs and other key stakeholders on the draft DCO from August 2015 as noted at 9.8 of the Consultation Report (Application document 5.1). Workshop sessions were also held with the LPAs and MMO to consider drafting.</p>

	<p>21.3 If an applicant proposes that the approval of matters be required from a person other than the relevant LPA, the applicant should consider whether that person has the capacity and expertise to perform that function.</p>	<p>The Applicant does not propose that matters be approved by any person of inappropriate capacity or expertise. Further, no organisation has been given such power without it being clear to the Applicant that they have the relevant capacity and expertise. There was ongoing dialogue during pre-application consultation until submission, and indeed informal dialogue continues.</p>
<p>Defining “commencement” – advance works and environmental protection</p>	<p>23.1 In some decisions on DCO applications the Secretary of State for Transport has removed definitions of “commence” and/or “preliminary works” which appeared to be intended to allow a range of site preparation works (such as demolition or de-vegetation) to take place before the relevant LPA had approved details of measures to protect the environment under the requirements.</p>	<p>The draft DCO's definition of "commence" is addressed in the Schedule of Issues regarding the ExA's query on the Article 2 definition of "commence" as being too broad. As noted in the DCO Issue Specific Hearing, this is not anticipated to give rise to any issues although a form of prior notification is being considered.</p>
<p>Hedgerows and Trees</p>	<p>24.1 Applicants may wish to have a general power to remove hedgerows if necessary for the purposes of carrying out the authorised development and to remove any obligation on the undertaker to secure consent to remove those hedgerows under the Hedgerows Regulations 1997. However, it is recommended that articles of this kind should only be used where hedgerows are present and are known to be likely to need to be removed, whether in whole or in part.</p>	<p>The Applicant has applied for this general power under Article 31. Due to the current stage of design it cannot be confirmed which hedgerows will need to be removed and so the general power is considered proportionate. Hedgerows are present and their removal may be necessary.</p>
	<p>24.2 Applicants may also wish to have a general power to fell, lop or cut back roots of trees subject to a tree preservation order (TPO). This power should not however be used as a precautionary measure and should, generally, only be applied to trees which are subject to TPOs, or otherwise protected by virtue of being situated in a conservation area, prior to the making of the DCO. This is so as to allow proper consideration and examination of the particular characteristics that gave rise to the special protection given to such trees and the desirability of continuing such protection.</p>	<p>The Applicant has applied for this general power under Article 31.</p>

Extinguishment of private rights over land	25.2 An applicant may wish to extinguish private rights over land when it is acquiring land by the use of a compulsory acquisition power in the draft DCO or by agreement with the landowner. An applicant may also wish to extinguish private rights over land it already owns or land which is otherwise required for the NSIP	Text is explanatory and no comment is needed.
	25.3 The land plan accompanying the application should identify any land over which it is proposed to exercise powers of compulsory acquisition including any land in relation to which it is proposed to extinguish private rights	While this is done by the Land Plans that were submitted with the Application to PINS, the Applicant has agreed to submit further Land Plans to clarify its proposed exercise of compulsory acquisition powers. These plans will be submitted for Deadline 2
	25.4 Where the applicant is seeking powers in the DCO to acquire land compulsorily, the drafting of the article containing the powers should make it clear whether or not the applicant is also seeking a power to clear the title of the land of all private rights. The applicant should consider whether the article should be subject to a power under a separate article which would allow the applicant to exclude a particular private right from the blanket extinguishment power.	The draft DCO's Article 18 clearly empowers the Applicant to extinguish private rights in land where land is subject to compulsory acquisition powers.
Restrictive covenants	26.1 It may be appropriate to include a power to impose restrictive covenants over part of the land which is subject to compulsory acquisition or use under the DCO. Before deciding whether or not the power is justified the Secretary of State will need to consider issues such as proportionality; the risk that the use of land above or below a structure could be sterilised if it has to be acquired outright in the absence of a power to impose restrictive covenants; or whether there is for example a policy of establishing a continuous protection zone for the infrastructure network which could be secured more efficiently with the benefit of this power.	The draft DCO's Article 17 empowers the Applicant to impose restrictive covenants. No comment.

	26.2 The power to impose restrictive covenants over land above a buried cable or pipe, or where a slope contains artificial reinforcement has been granted in DCOs.	No comment.
	26.3 In order to enable the Secretary of State to consider whether imposition of restrictive covenants is necessary for the purposes of implementing an NSIP and appropriate in human rights terms applicants should be prepared to fully explain and justify the need for including such powers.	Please see the Statement of Reasons Section 7 and 9 (Application document 4.1).
Application, modification or exclusion of statutory provisions	27.1 Under section 120(5)(a) of the PA 2008, DCOs may apply, modify or exclude an existing statutory provision which relates to any matter for which provision may be made in the DCO.	No comment.
	27.2 The power to apply, modify or exclude an existing statutory provision should be set out in an article in the main body of the DCO. Those provisions that are proposed to be applied, modified or excluded by a DCO should be clearly identified, and, if extensive, identified in a schedule or schedules.	The draft DCO does so in: <ul style="list-style-type: none"> • Article 6 (Application and modification of legislative provisions); • Article 17 (Compulsory acquisition of rights); • Article 19 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981); and • Article 34 (Requirements, appeals, etc).
	27.3 In this context, applicants should also be aware of the opportunities and restrictions under section 150 of the PA 2008 on removing consent requirements.	No comment.
DCOs and deemed marine licences		
Geographical	28.1 A DCO may deem consent for a deemed marine licence under Part 4 of the Marine and Coastal Access Act 2009	The draft DCO includes deemed marine licences (see Article 28 and

<p>scope</p>	<p>(MCAA 2009), subject to specified conditions.</p> <p>28.2 This power only applies where the activity is to be carried out wholly in one or more of England, waters adjacent to England up to the seaward limits of the territorial sea (twelve miles offshore), in a Renewable Energy Zone and in an area designated under section 1(7) of the Continental Shelf Act 1964, except where the Scottish Ministers have functions.</p>	<p>Schedules 10 to 15).</p> <p>No comment.</p>
<p>Multiple deemed marine licences</p>	<p>29.2 If applicants propose that a draft DCO deem more than one deemed marine licence, and include drafts of those as schedules to the DCO, then they will need to give careful consideration as to how the respective elements of the NSIP are allocated between the draft licences. This is so as to ensure all elements of the NSIP in the marine environment for which development consent is sought are included in one or other of the draft licences, the split between those elements is clearly described in the licences and those are consistent with the authorised NSIP as set out in the DCO.</p> <p>If possible the approach taken should be agreed sufficiently early with the MMO.</p>	<p>The Applicant has carefully considered how the respective elements of the NSIP are allocated between the draft licences, splitting the licences between generation assets, transmission assets and interconnection assets, and between different phases (for carrying out works either in a single construction phase or in two construction phases). Accordingly, and as explained in the Schedule of Issues regarding Article 28, the deemed marine licences in the draft DCO are as follows:</p> <ul style="list-style-type: none"> (a) Generation Assets (Licence 1 – Phase 1) (see Schedule 10) (b) Generation Assets (Licence 2 – Phase 2) (see Schedule 11) (c) Transmission Assets (Licence 1 – Phase 1) (see Schedule 12) (d) Transmission Assets (Licence 2 – Phase 2) (see Schedule 13) (e) Interconnection (Licence 1 – Phase 1) (see Schedule 14) (f) Interconnection (Licence 2 – Phase 2) (see Schedule 15) <p>The approach taken is in line with MMO guidance, and the MMO provided confirmed during the DCO Issue Specific Hearing that it is satisfied with this approach.</p>
<p>Transfer provisions</p>	<p>30.3 Sub-section 72(7) MCAA 2009 provides that, on application by the licensee, the licensing authority which granted a deemed marine licence may transfer it from the licensee to another person.</p> <p>Whilst this provision does not expressly allow part only of a</p>	<p>No comment.</p>

	<p>deemed marine licence to be transferred, sub-section 120(5)(a) of the PA 2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in a DCO, which would include this provision.</p> <p>Hence, it is considered that there is no legal reason to prevent a DCO from allowing part only of a deemed marine licence to be transferred, although there may be operational difficulties with such an approach including monitoring compliance and taking enforcement action.</p>	<p>The Applicant's response to the Schedule of Issues, regarding Article 5 of the draft DCO, addresses the proposed power under the draft DCO to transfer the benefit of the deemed marine licences. The deemed marine licences have been split into separate licences to avoid the need to transfer a licence in part.</p>
Conditions	<p>31.1 Sub-section 71(1)(b) of the MCAA 2009 allows a deemed marine licence to be granted subject to such conditions as the licensing authority thinks fit. These may, under sub-section 71(2), relate to the activities authorised by the licence and precautions to be taken or works to be carried out (whether before, during or after the carrying out of the authorised activities) in connection with or in consequence of those activities. Sub-section 71(3) sets out six matters that may in particular be dealt with by conditions.</p>	<p>The law and policy relating to planning conditions have been so considered, as noted at the DCO Issue Specific Hearing where no Interested Party or LPA raised any concern on this point. Further the draft DCO's deemed marine licences are in standard form and the conditions are agreed with the MMO.</p>
	<p>31.2 Whilst the law and policy relating to planning conditions does not necessarily apply to DCO requirements relating to the offshore elements of an NSIP or to deemed marine licence conditions it is considered that similar principles should apply when drafting these.</p>	

2. ADVICE NOTE 13: PREPARING THE DRAFT ORDER AND EXPLANATORY MEMORANDUM

ADVICE NOTE 13: PREPARING THE DRAFT ORDER AND EXPLANATORY MEMORANDUM		
Topic	Advice note thirteen: Preparing the Draft Order and Explanatory Memorandum (non-narrative extracts)	Applicant's response

Timescale for submission of the draft DCO and explanatory memorandum	<p>Developers are advised to provide a draft order and explanatory memorandum to the Planning Inspectorate as soon as the details of their proposals have sufficiently crystallised to allow them to prepare meaningful draft application documents. This is likely to coincide with developers preparing their environmental statement, for those proposals requiring environmental impact assessment.</p> <p>Given the long gestation period of proposed NSIPs the Inspectorate would encourage developers to submit successive drafts of DCOs for comment to the Inspectorate at key stages in the refinement of their project at the pre-application stage.</p>	<p>The Applicant did provide several iterations of the draft Order and explanatory memorandum to the Planning Inspectorate once the details of their proposals were sufficiently crystallised during the course of 2015. Email evidence can be provided to the ExA if required.</p>
	<p>In any event, the Planning Inspectorate would wish to receive a draft order and explanatory memorandum well in advance of formal submission of the application for development consent.</p> <p>It would also be helpful for the Inspectorate to receive copies of the draft land plan and works plan at the same time as the draft order and explanatory memorandum.</p>	<p>The Applicant did submit to PINS a draft Order and explanatory memorandum well in advance of formal submission of the application as noted above.</p> <p>The Applicant did submit to PINS copies of the draft land plans and works plans at the same time as the draft Order and explanatory memorandum, as noted above.</p>
	<p>The Planning Inspectorate would welcome the opportunity to offer comments on technical/drafting aspects of draft orders, but without prejudice to the Secretary of State's eventual decisions on applications.</p> <p>The draft order should also be made available to other parties who may have useful comments on the operation of the order. For example, the relevant local planning authorities should have sufficiently early sight of the DCO's proposed draft requirements.</p>	<p>PINS did offer comments on technical/drafting aspects of the draft DCO.</p> <p>The draft DCO was made available to the parties noted at 9.8 of the Consultation Report (Application document 5.1).</p>
Form of the draft DCO	<p>The DCO must be made in the form of a Statutory Instrument ("SI") if it includes "legislation provisions" that e.g. apply, amend or exclude other statutory provisions. Our experience has been that this is usually required. In such cases the draft DCO should therefore be submitted as a draft SI, and follow the statutory drafting conventions. Guidance on these conventions is</p>	<p>The draft DCO is in the form of an SI because it does include legislation provisions, and was submitted to PINS as a draft SI, following the statutory drafting conventions.</p> <p>Where drafting issues are identified, such as the use of "[not used]", if necessary these will be resolved prior to submission of the final draft</p>

	<p>available online from the Office of the Parliamentary Counsel. A template for SIs has been prepared by the Office for Public Sector Information; please contact the Planning Inspectorate for details.</p>	<p>DCO. The Applicant is maintaining a tracker of such issues and will provide 'track changed' versions of the draft DCO as appropriate.</p>
<p>Content of the draft DCO</p>	<p>The draft DCO should include the following:-</p> <ul style="list-style-type: none"> • A full, precise and complete description of each element of the NSIP, preferably itemised in a Schedule to the DCO; • A full, precise and complete description of each element of any necessary “associated development”, which should be clearly identified in a Schedule to the draft DCO. Associated development is subordinate to the NSIP, but necessary for the development to operate effectively to its design capacity; • Guidance has been issued by the Department for Communities and Local Government (“DCLG”) on the scope of associated development – “Guidance on associated development applications for major infrastructure projects” (April 2013); • Each element of the NSIP and each element any necessary associated development should be clearly set out as separate numbered ‘works’ in a Schedule to the draft DCO, and cross-referenced to the corresponding works shown on the works plan; • Terms and phrases referred to in the draft DCO should be clearly defined, and used consistently throughout the document; • The draft DCO should also include:- Provisions giving the developer authority to take actions necessary for the project to be implemented satisfactorily. These might include, for example, authority to compulsorily acquire land, or to stop-up streets or extinguish private 	<p>The draft DCO's Schedule 1 provides this description.</p> <p>The draft DCO's Schedule 1 provides this description.</p> <p>This guidance has been taken account of in preparing the draft DCO.</p> <p>The draft DCO's Schedule 1 does so.</p> <p>The draft DCO does so. As noted above where drafting issues are identified in Examination regarding consistency and defined terms these will be resolved.</p> <p>The draft DCO does so.</p>

	<p>rights of way, or to carry out protective works to buildings;</p> <ul style="list-style-type: none"> • Other provisions which are necessary for the purposes of the project for example, applying or amending existing legislation, or protecting the interests of persons potentially affected by compulsory land acquisition; • “Requirements” to which the development authorised by the DCO is to be subject. Requirements are similar to conditions under existing consent regimes, for example specifying the matters for which detailed approval needs to be obtained before the development can be lawfully begun, for example a detailed landscaping scheme. • The developer should seek to agree wording for proposed requirements with the body to whom details are to be submitted for subsequent approval, and in any event seek the local planning authority’s views on proposed requirements as they will enforce any breach of the terms of any order granted. 	<p>The draft DCO includes such provisions.</p> <p>The draft DCO has Requirements.</p> <p>The Applicant has consulted extensively with the LPAs and MMO on requirements and subsequent approval, see 9.8 of the Consultation Report (Application document 5.1). Further the applicant through the Statement of Common Ground process and regular informal contacts continues to work alongside the LPAs and MMO.</p>
<p>“Model provisions”</p>	<p>In the absence of relevant guidance published by DCLG, it would be helpful for the Planning Inspectorate to receive a track-change draft of the DCO showing any departures from the model provisions. The Planning Inspectorate would wish to receive such a track-change draft of the DCO both at the pre-application stage and with the formal submission of the application for development consent.</p>	<p>The draft DCO substantially follows the previous offshore DCOs, although these have been based on the model provisions. If a track change version is required to compare the draft Order with the model provisions this can be provided.</p>
<p>Other provisions</p>	<p>Provisions used in ‘predecessor’ regimes such as for Transport and Works Act Orders or Harbour Empowerment Orders may</p>	<p>As noted above the provisions of previous offshore DCOs provided sufficient predecessor drafting.</p>

	<p>be helpful in the drafting of a DCO.</p> <p>Developers should though satisfy themselves that the inclusion of particular wording is appropriate and relevant in all the circumstances of a given project. The relevant precedent and the rationale for including the particular wording of a provision will need to be set out and justified in the explanatory memorandum.</p>	<p>The Applicant is satisfied that the draft DCO's wording is appropriate and in line with the previous offshore DCOs, this is further noted in the Schedule of Offshore DCO Drafting which has been submitted to the ExA with this document.</p>
<p>The importance of the description of the development</p>	<p>Developers are therefore strongly advised to engage a person with the necessary legal expertise and relevant experience to draft their order sufficiently early at the pre-application stage. Clarity and precision in the description and drafting of the provisions can, for example, prevent future uncertainty over whether development and other activities are carried out within the terms of the order.</p> <p>It is essential that the drafting in the order accurately defines the land over which powers are required and is consistent with the approach taken in the land and works plans which must also be submitted with the application, and with any other plans and drawings that the developer considers are necessary to describe their proposals.</p>	<p>As noted above the Applicant has used the previous offshore DCOs as a basis for drafting, which combined with the engagement of Bond Dickinson LLP who assisted in the promotion of the East Anglia ONE Offshore Wind Farm Order provides the necessary legal expertise.</p> <p>The draft DCO's drafting accurately defines the land, and is consistent with the land and works plans. The Application was accepted and is in line with the Section 55 Acceptance of Applications Checklist.</p>
<p>Compulsory acquisition</p>	<p>Guidance has been issued by the Department for Communities and Local Government ("DCLG") on procedures for compulsory acquisition – "Planning Act 2008: guidance related to procedures for the compulsory acquisition of land" (DCLG September 2013)</p>	<p>The Applicant has given appropriate consideration to this guidance as noted in the Statement of Reasons (Application document 4.1 and in particular paragraph 1.12).</p>

	<p>If a DCO seeks to include the compulsory acquisition of certain special categories of land, such as local authority, statutory undertaker, National Trust or common land, then additional procedures apply. These are either that a provision authorising the compulsory acquisition of such land cannot be included in an order unless the appropriate certificate of authorisation is issued by the Secretary of State; or in some cases once a decision to grant an order is made, the order will be subject to special parliamentary procedure before it comes into effect.</p>	<p>This is noted by the Applicant.</p>
	<p>Developers should obtain any required certificate before submission of the application wherever possible (under s127 and/or s131) or at least have made some progress towards obtaining any necessary certificate.</p>	<p>Details of negotiations with affected utilities to which Section 127 applies are set out at 8.10 onwards of the Statement of Reasons (Application document 4.1). Further updates will be provided during the course of the examination.</p>
	<p>The explanatory memorandum should confirm the stage reached in these procedures.</p>	<p>No comment.</p>
<p>Removal of consent requirements</p>	<p>It is also possible for a draft order to include provisions which remove the need to obtain certain additional authorisations. It is necessary for the authority responsible for granting the authorisation to consent to this process. The list of authorisations which can be treated in this way is contained in Schedule 1 of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010.</p> <p>The explanatory memorandum should identify the authorisation, the reasons why the developer is following this route and should state how close the developer is to achieving the consent of the authority concerned.</p>	<p>The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 have been revoked and replaced by the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. The authorisations that are noted in Schedule 2, Part 1 to the 2015 Regulations are not sought in the draft DCO.</p> <p>No comment.</p>