

East Anglia THREE
Offshore Windfarm

East Anglia THREE

Applicant's Response to the Examining Authority's Schedule of Issues arising from the draft Development Consent Order

Document Reference – Deadline 1/DCO
ISH/Schedule of Issues (Applicant's response)

APPLICANT'S RESPONSE TO THE EXAMINING AUTHORITY'S SCHEDULE OF ISSUES ARISING FROM THE DRAFT DCO

For the purposes of this response, the following DCOs 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.

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Structure (Sch 1)	(Requirements)	The requirements are not set out in their own schedule, instead forming a part of a broader schedule which also defines the project. There are no obvious technical / drafting concerns that arise from this, but it is different from some other made Orders which do place the requirements in a separate schedule.	The draft Order is in line with the approach used in the previous offshore DCOs.
Structure (Schs 10 – 15)	(Deemed Marine Licences)	The Deemed Marine Licences (DMLs) have been drafted using a standardised template in which equivalent provisions receive the same number in every licence and some provisions that are not relevant to individual licences are included without content and marked as '[Not used]'. This approach has assisted the ExA and interested parties in comparing provisions between the six licences.	The DMLs are contained in a schedule to the Order and do not form part of the articles comprised in the main body of the Order. As such the DMLs are not subject to the usual statutory drafting conventions. Where multiple DMLs are included within an Order and the conditions are very similar, and in some case identical in each DML, use of standard numbering for particular conditions across each DML enables easy cross referencing and comparison. This simplifies subsequent applications for approvals and assists in monitoring compliance with DMLs during construction and operation. To date the MMO have made attempts to standardise the drafting of DMLs and this would assist in this approach.
		That being said, a similar approach was	See above.

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		<p>advocated by the applicant in Dogger Bank Teesside A & B but was not supported by the Secretary of State on the basis that it is not provided for in current statutory drafting conventions. This in turn required changes to that Order and to cross references between provisions during the approval period. If multiple DMLs are retained (see Article 28 and Schedules 10 to 15 below) the applicant is advised to remove provisions marked as '[Not used]' and to renumber remaining provisions in sequence during this examination. A table of comparison highlighting equivalent provisions between the six DMLs in this Order should be made. Comments on this are also sought by Trinity House, the Marine Management Organisation and the Maritime and Coastguard Agency who have been carrying out joint work on the standardisation of some DML provisions.</p>	<p>To the extent that it is considered necessary to remove provisions marked as '[Not used]' and to renumber the remaining provisions in sequence, the Applicant would only propose to do so towards the end of the Examination period, once all other drafting points have been settled, and to provide a table of comparison at that point.</p>
Structure	(Relationship with made EA1 Order)	<p>The made EA1 Order has been amended by the EA1 Offshore Wind Farm (Corrections and Amendments) Order 2016. The ExA will need to compare provisions between the current draft Order and the EA1 Order and to consider the merits of proposed amendments to the EA1 Order. For these purposes, the applicant is requested to prepare and bring to the hearing a consolidated version of the EA1 Order into which the correcting and amending provisions from the EA1 Offshore Wind Farm (Corrections and Amendments) Order 2016 have been inserted, shown in tracked changes.</p>	<p>A consolidated version of the EA1 Order was submitted with the Applicant's response to the Rule 6 letter.</p>
Explanation	(The explanatory	The explanatory memorandum makes extensive	We have looked at previous offshore DCOs and all follow a

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	memorandum references to the model provisions)	references to the model provisions. These have no current statutory force. Whilst they were invaluable in the drafting of early Orders in respect of which there were no examples arising from practice, there is now a large body of made Orders for offshore wind farm development, the effect of which in a number of instances has been to develop practice from the approach in the model provisions. The applicant is requested in the remainder of this schedule to refer the ExA to examples drawn from recent practice and is encouraged to explain the use of any model provision with reference to relevant changes that may have arisen in more recent practice.	similar approach. As requested, this is considered further in relation to relevant provisions below. We also enclose a separate table which compares relevant provisions of the previous offshore DCOs against the draft Order, and highlights relevant changes.
Generally	(The word "shall" throughout the draft)	The word "shall" is used frequently in the draft DCO. PINS' DCO drafting advice note (AN15) advises at para 2.1 that use of the words "shall" or "will" should be avoided because of ambiguity over whether they are an imperative or a statement of future intention. More recent practice also suggests that a substitution of "must" for "shall" will not always result in appropriate drafting. The applicant is asked to individually review all drafting in which the term "shall" has been used and to advise its approach to replacement terms.	The Applicant has considered each instance of the use of "shall" and has amended the draft Order where considered appropriate.
Article 1	(Citation and commencement)	No comments at this stage.	
Article 2	(Interpretation)	"commence"...	"commence" ...

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		<p>In comparison with definitions in similar made Orders, this definition in respect of onshore works (b) is broad. It permits works more widely than the more normal practice which is that a DCO should not permit works that are likely to have significant environmental effects or in respect of which particular mitigation has been proposed to commence before the discharge of any requirement that delivers the appropriate management or mitigation.</p> <ul style="list-style-type: none"> • Archaeological works are capable of being carried out as pre-commencement activity onshore. How does this fit with requirement 20 (Archaeology)? It does not appear to prevent onshore works that could affect archaeological significance being undertaken before a written scheme of investigation is approved. The effect is that Archaeological works (or site clearance and demolition works with archaeological implications – see below) could be carried out before the requirement is discharged and there is no alternative requirement for those pre-commencement works to be in accordance with the outline archaeological scheme or any other scheme. • Similar considerations apply to demolition work and site clearance works, both of which are capable of being carried out as pre-commencement activity onshore. • Where any substantial works that are of a greater than preparatory nature are enabled as pre-commencement activity, there are possibly significant implications for the interests protected by the following 	<p>To remove all the listed exemptions would create a circular restriction. The project cannot commence until a particular requirement is discharged, but in order to discharge that requirement, activities must be carried out which are not excluded from the definition of "commence".</p> <p>The current wording reflects precisely the wording used in the EA ONE Order save for the EA THREE drafting being by reference to the Section 56(4) of Town and Country Planning Act 1990. This is also reflected in two of the previous offshore DCOs.</p> <p>The Applicant understands that the Local Planning Authorities are content with the exclusions, and how this has been working in practice in respect of the East Anglia ONE project.</p> <p>In the case of the East Anglia THREE project it is not thought that there will be any pre-commencement works of a greater than preparatory nature in any event.</p>

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		<p>requirements in addition to requirement 20:</p> <ul style="list-style-type: none"> ○ 18 (Surface and foul water drainage); ○ 19 (Contaminated land and ground water); ○ 21 (Ecological management plan); ○ 22 (Code of construction practice); ○ 29 (European protected species onshore). 	
		<p>“deemed generation assets marine licences”...</p> <p>The reference to ‘Marine and Coastal Access Act 2009’ is to ‘the Marine and Coastal Access Act 2009’. However, given that this legislation is already proposed to be defined as “the 2009 Act” in this article, a better response would be to ensure that this and all further references to the 2009 Act in the Order use the proposed defined term.</p>	<p>“deemed generation assets marine licences”...</p> <p>This will be corrected in the next version of the draft Order.</p>
		<p>“East Anglia ONE Order”...</p> <p>The definition needs to include a reference to the 2014 made Order as amended by the East Anglia ONE Offshore Wind Farm (Corrections and Amendments) Order 2016 (SI No 447).</p>	<p>“East Anglia ONE Order”...</p> <p>This will be corrected in the next version of the draft Order.</p>
		<p>“maintain”...</p>	<p>"maintain"...</p>

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		<p>In comparison with definitions in similar made Orders including that for EA1, this definition is quite broad and appears to enable some activities beyond more normal definitions of the term. The made Order for Dogger Bank Teesside A&B (DBTA&B) provides as follows:</p> <p><i>“maintain” includes upkeep, inspect, repair, adjust, alter, relay and remove, to the extent assessed in the environmental statement; and any derivative of maintain must be construed accordingly...’</i></p> <p>Is there any reason why an equivalently limited and simple provision could not be used here?</p>	<p>This wording reflects precisely the wording used in the EA ONE Order. The wording was subject to some discussion at the EA ONE examination hearings and was agreed with the MMO.</p> <p>Among the reasons for the wording in this form are to make clear that in addition to "inspect repair adjust alter":</p> <ul style="list-style-type: none"> (i) the ancillary works can be removed reconstructed and replaced; (ii) any component part of any wind turbine generator, offshore substation or meteorological mast can be removed reconstructed or replaced; and (iii) Foundations cannot be removed reconstructed or replaced. <p>It was expressly agreed with the MMO at the EA ONE examination that this wording reflected those maintenance operations for which no new marine licence would normally be required, provided that those operations had already been assessed in the Environmental Statement.</p> <p>Under Condition 13(j) of the Generation, Transmission and Interconnector DMLs an offshore operations and maintenance plan must be submitted to the MMO which makes provision for review and resubmission every three years during the operational phase.</p> <p>Accordingly the Applicant considers that the wording in the draft Order should remain as drafted and that the wording in the made Order for DBTA&B does not sufficiently make clear the position with regard to ancillary works, component parts, or foundations.</p> <p>The Applicant understands that the MMO agrees with this approach.</p>
		<p>“pin piles”...</p>	<p>“pin piles”...</p>

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		<p>What is the intended meaning of the drafting 'for fixity of' used in this definition? A clearer definition would be beneficial.</p>	<p>An amended definition will be included in the next version of the DCO, which replaces the word "fixity" with "to secure"..</p>
		<p>“statutory undertaker”...</p> <p>This term is defined by reference to PA2008 s127. PA2008 s138 contains a different definition of a statutory undertaker and those that come within it might not also fall within the s127 definition and so may be excluded from the definition in this Order. Why has the applicant limited the definition to s127 undertakers and is there any reason why it should not be broader?</p>	<p>Section 138 (Extinguishment of rights, and removal of apparatus, of statutory undertakers etc) was amended by the Growth and Infrastructure Act 2013 to include a new definition of Statutory Undertaker by reference to Part XI of the Town and Country Planning Act 1990. This differs from the definition of Statutory Undertaker in Section 127 (Statutory undertakers' land) which refers to the Acquisition of Land Act 1981, Section 8. The Examining Authority considers the effect of this difference is to create a wider class of 'Statutory Undertaker' under Section 138.</p> <p>The Applicant has given further consideration as to whether the definition should be broadened, and proposes to amend the definition in the draft Order to include the following additional wording:</p> <p style="padding-left: 40px;">"...and (b) a public communications provider (as defined in section 151(1) of the Communications Act 2003)."</p> <p>This definition is in line with the Dogger Bank Teesside A and B Offshore Wind Farm Order 2015.</p>
		<p>“Trinity House”...</p> <p>A relevant representation from Trinity House seeks changes to the definition of that body. What changes are sought?</p>	<p>"Trinity House"...</p> <p>We understand that Trinity House is content with the definition of the Trinity House body contained within the draft Order.</p>

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		<p>“undertaker”...</p> <p>This is a key term in the draft Order as it describes the entity or entity that would implement the development. Made Orders for similar offshore wind farm developments that include phased or multiple entity delivery (Dogger Bank Creyke Beck (DBC), DBTA&B, Hornsea 1) include definitions for phases and / or terms for delivery bodies responsible for delivering phases. (For example, the Dogger Orders refer to future delivery bodies for different phases as ‘Bizcos’). A delivery body model is not used in this draft and there are no definitions of phases or delivery bodies for phase delivery.</p> <p>The term ‘undertaker’ in this Order means East Anglia THREE Limited. The term is widely used in the singular throughout the draft Order in a manner that may give rise to uncertainty if two undertakers ever need to operate in tandem and both require the powers granted to the undertaker. The use of this term in the singular would also raise questions if the benefit of part of the Order (be that a phase or a component) were to be transferred to another entity. Other provisions in the draft Order do anticipate that transfer of benefit may occur (see article 5 below). The applicant is requested to review the approach taken to this issue in other recent made Orders and to consider how to provide greater clarity for plural undertakers and for transfers of benefit. Given the extent of this usage in the Order, this point is not raised individually in every provision below to which it is relevant.</p>	<p>"undertaker"...</p> <p>It is not thought that the use of the term "undertaker" in the singular gives rise to any confusion. The transfer provisions make clear (Article 5(5)) that in the event of a transfer the term "undertaker" will include the transferee or lessee.</p> <p><i>Approach taken in the previous Offshore DCOs</i></p> <p>The approach taken in DBT A&B is to "confer powers to construct two offshore wind turbine electricity generating stations ("the Generating Stations") (DBTAB Explanatory Memorandum 1.2). "Under the terms of the draft Order powers will be conferred upon two companies established for the purpose of taking forward the construction and operation of the Generating Stations together with the associated development. The two companies (Bizco 2 and Bizco 3) are identified in the draft Order..." (Explanatory Memorandum 1.3).</p> <p>The Explanatory Memorandum goes on to state:</p> <p><i>"2.4 To lead the investment and construction in the numerous Dogger Bank wind farm projects, a number of special purpose companies have been set up. Dogger Bank Project 2 Bizco Limited ("Project 2 Bizco" or Bizco 2") is the undertaker for and will take forward the Dogger Bank Teesside A project from the point of consent and Dogger Bank Project 3 Bizco Limited ("Project 3 Bizco" or "Bizco 3") is the undertaker for and will take forward the Dogger Bank Teesside B project from the point of consent. Project 2 Bizco and Project 3 Bizco are together hereafter referred to as "Bizcos". The ownership and control of the Bizcos is currently the same as for Forewind.</i></p> <p><i>2.5 It is the intention that each of the Projects authorised by the Order can or will be undertaken separately from the other.</i></p> <p><i>2.6 The current ownership arrangements are likely to evolve, with one of the parent companies taking a leading role in</i></p>

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			<p><i>each of the respective Bizcos. The infrastructure assets that will form each wind farm may or may not be owned by the respective Bizcos. There are a range of complex issues to inform a final decision including contemplation of unincorporated versus incorporated joint venture structures. Whatever asset ownership model is selected for each project, ownership and control of each Bizco will always match the ownership and control of assets.</i></p> <p><i>2.7 As mentioned in paragraph 1.3 above, consent is being sought to confer powers on two of these companies which are identified in the Order in respect of the Generating Stations together with the associated transmission assets. Under Article 7 the provisions of the Order shall have effect solely for the benefit of the Undertaker defined in the Order. Notwithstanding this, under article 8 the Undertaker has the power to transfer some or all of the benefit of the Order. The power to transfer extends to any provision of the proposed deemed Marine Licences, more information on which is provided in section 13 below and in particular the comments provided in relation to article 38 of, and Schedule 7, to the Order."</i></p> <p>The DBTA&B Explanatory Memorandum goes on to explain that:</p> <ul style="list-style-type: none"> • The proposed Generating Stations each form an NSIP in their own right (EM 9.3); • A single application for development consent can cover more than one NSIP – this is clearly the case here (EM 9.5); • The Order authorises two separate NSIP wind farms along with the grid connection for each of these. These wind farms each have separate connection points into the same National Grid substation – following discussion with key stakeholders and regulators it was determined at an early stage to combine these two wind farms into one application for Development Consent Order (EM 9.6);

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			<ul style="list-style-type: none"> • The two NSIPs are likely to be constructed by different operators Bizco 2 and Bizco 3, each named as an Undertaker within the Order definitions. Therefore for the sake of clarity and transparency for stakeholders, the areas over which each Undertaker will have control both offshore and onshore is shown on the Works Plans through the use of different Works Nos (EM 9.7). There are also shared areas identified separately. These Work Nos are explicitly referenced as "shared areas" within the Order (EM 9.7); • As the projects will be built by different operators they may be constructed at different times. To capture these different build scenarios in the Order, and to make sure there is flexibility to build one project independently of the other, each project is split into offshore stages which are defined specifically in the Order (EM 9.8). <p>A similar approach is set out in the EM for Dogger Bank Creyke Beck (see in particular paragraphs 1.2, 1.3, 2.4, 2.5, 8.5, 8.6, 8.7 and 8.8) with Bizco 1 taking forward the Dogger Bank Creyke Beck A project and Bizco 4 taking forward the Dogger Bank Creyke Beck B project.</p> <p>A similar approach is also set out in the EM for Hornsea 1 (see in particular paragraphs 1.5, 3.6, 43.6, 43.7, 43.8 and 43.9).</p> <p><i>Approach taken in the EA3 draft Order</i></p> <p>It is considered, for the reasons below, that the approach adopted in the draft EA3 Order is the appropriate approach without further amendment, and without resort to the "Bizco" model.</p> <p>In the case of the draft Order for East Anglia THREE, there is only one delivery body proposed and only one generating station.</p>

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			<p>As made clear in the Explanatory Memorandum:</p> <ul style="list-style-type: none"> • The purpose of the EA3 Order is to grant EATL development consent for an offshore generating station of up to 1200MW (EM 1.2); • EATL is considering constructing East Anglia THREE in either a single phase or in a two phased approach. Under a single phased approach EA3 would be constructed in one single build period and under a two phased approach EA3 would be constructed in two consecutive phases, each consisting of up to 600MW (EM 4.1.1). <p>As such, it is considered that there is no requirement to use a "delivery body model" or "delivery bodies for phase delivery". In practice, the position is no different from any other offshore wind farm DCO where there is a single undertaker who may or may not, at some stage in the future, decide to split the project into construction phases and who may or may not decide to transfer the whole or part of the benefit of the DCO to another delivery body.</p> <p>In the normal course of events there would be no restriction on an undertaker splitting a project into construction phases (assuming this had been sufficiently assessed for EIA purposes) or transferring part of the benefit of the DCO to a third party under the transfer provisions in the DCO.</p> <p>In the case of EA3, if the benefit of part of the Order were to be transferred, at some stage in the future, to another entity, this would be dealt with under Article 5 of the draft Order which, as explained in the EM: "Provides for the transfer of the whole or part of the benefit of the Order with the consent of the Secretary of State subject to certain exceptions. It also provides for the transfer of any of the deemed Marine Licences with the consent of the Secretary of State".</p> <p>At this stage however it is not known:</p>

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			<ul style="list-style-type: none"> • Whether the benefit of part of the Order will be transferred at all; • If it were to be transferred, to whom; • If it were to be transferred, how much of the benefit would be transferred. <p>Accordingly, it is considered that the approach adopted in the draft EA3 Order is the appropriate approach without further amendment, and without resort to the "Bizco" model.</p>
		<p>“wind turbine generator” or “WTG”...</p> <p>This definition applies the same meaning to two terms. It is best practice for a single term to be employed.</p>	<p>“wind turbine generator” or “WTG”...</p> <p>The Applicant will update the next version of the draft Order to adopt a single defined term.</p>
		<p>Is there a need for the inclusion of a definition of “jointing bay” or “jointing works”, or of any other technical terms widely employed in the Order and particularly Schedule 1, Part 1 (Authorised Development)?</p>	<p>The Applicant considers that "any other technical terms widely employed in the Order and particularly Schedule 1, Part 1" are adequately defined.</p> <p>The following indicative definitions of "jointing bay" and "jointing works" are proposed:</p> <p><i>"jointing bay" means an excavation formed to enable the jointing of high voltage power cables;</i></p> <p><i>"jointing works" mean a process by which two or more cables are connected to each other by means of cable joints within a jointing bay.</i></p>

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			<p>To the extent that it assists the Examining Authority, a jointing bay is an excavation formed to enable the jointing of high voltage power cables. A jointing bay must be deep enough to permit the subsequent safe burial of the completed joint and it must be wide enough to enable the jointers to work comfortably. Temporary or permanent support will be required to prevent excavation collapse, or where space permits, the excavation sides can be battered to a safe angle. A concrete slab is usually required for the base of the excavation, and permanent support is usually provided by blockwork or reinforced concrete walls. When the joint is complete the excavation is backfilled with cement bound sand or other uniformly graded material. A concrete cover may or may not be provided. An inspection chamber with man access (a manhole cover) may or may not be provided. A small, above ground kiosk can be necessary, depending on the type of cable and any future test requirements.</p>
Article 3	(Development consent etc. granted by the Order)	<p>Article 3(2) appears to be superfluous. Can the applicant please consider why it is required and provide a justification for its retention, with reference to recent made Orders for similar projects?</p> <p>If a reference to delivery vehicles and / or phases were to be included in the Order, Article 3 could be a useful place to set out which body benefits from which powers.</p>	<p>Article 3(2) it is considered helpful to clarify the dividing line between onshore and offshore works and to clarify that the DMLs only cover Works 1 to 5A.</p> <p>As set out above, delivery vehicles are not considered appropriate to be referenced in the draft Order.</p>
Article 4	(Power to construct and maintain authorised project)	<p>The article does not contain a provision clarifying that matters not covered in the DMLs but that are licensable activities in the marine environment need a separate Marine Licence.</p> <p>See for example the equivalent provision in the</p>	<p>The next version of the draft Order will be amended to clarify this point in line with the previous offshore DCOs which contain the following provision:</p> <p><i>(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain a licence</i></p>

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		<p>made Dogger Bank Teesside A & B Order:</p> <p><i>'(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under Part 4 of the 2009 Act (marine licensing).'</i></p> <p>Can the applicant and the Marine Management Organisation (MMO) advise whether this absence has any adverse effect?</p> <p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.</p>	<p><i>under Part 4 of the 2009 Act (marine licensing).</i></p>
<p>Article 5</p>	<p>(Benefit of the Order)</p>	<p>Transfer of benefit is potentially a key concept for this Order.</p> <p>The offshore generating station can be delivered in two phases, each supported by a DML. It appears that the applicant envisages these being delivered by the same body and in sequence. However, as identified in the discussion of delivery bodies under Article 2 above, there are aspects of the drafting in the Order which do not exclude the potential for transfer of benefit between the phases but the approach to drafting does not fully support this. The applicant is asked to clarify its approach.</p> <p>Because the phases could be delivered at different times, each is also supported by a separate DML providing for its own connector cable to the shore and its own interconnector cable to the East Anglia ONE project (EA1). Can the applicant confirm that these assets are intended to be transferred to offshore</p>	<p>The Applicant considers that the ability to construct the offshore generating station in two phases rather than one, each supported by a DML, does not alter the concept of the transfer of benefit provisions.</p> <p>It is considered that the approach to drafting does support the "transfer of benefit between phases" insofar as it permits the undertaker, with the consent of the Secretary of State, to transfer ((5)(1)(a)) or lease ((5)(1)(b)) "any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed".</p> <p>The applicant can confirm that it is intended to transfer the connector cables to shore and (assuming they are to be used for transmission purposes) the interconnector cables to OFTOs.</p> <p>Amendments to Article 5 were agreed with the MMO at pre-application stage, which require notification to be given to the MMO under Article 5(10) where certain transfers are proposed to be made; and for the Secretary of State to consult the MMO in respect of giving consent for certain transfers under Article 5(3).</p>

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		<p>transmission operators (OFTOs)?</p> <p>Most recent offshore wind farm examinations have received written and oral representations from the MMO seeking clarifications and changes to the approach taken to potential transfer of benefit under their Orders. The MMO relevant representation in this case does not raise the same concerns with transfer of benefit. Can the MMO clarify whether there are any remaining concerns, with specific reference to its position in recent examinations in respect of transfers where the consent of the Secretary of State is not required? In responding to this question, both the applicant and the MMO are asked to note the Secretary of State's now established view that a partial transfer of benefit under a DML is permissible – a matter that is taken up below in relation to the DMLs.</p> <p>Article 5(4) permits transfer without SoS consent where Article 5(8) applies.</p> <p><i>Article 5(8)(a)</i> applies where the transferee or lessee is a person who holds a licence under the Electricity Act 1989 and <i>Article 5(8)(b)</i> where the time limits for compulsory acquisition (CA) compensation claims have expired. The ExA understands that the provisions of Article 5(8)(b) are necessary onshore, where it is important that benefit is not transferred without clarity that the transferee is able to discharge any outstanding liability for CA compensation. However, the applicant is asked to explain how the time limits for CA claims is relevant to a transfer of an offshore transmission asset in respect of which no such claims could arise? Is there a need for a further provision for OFTO assets (or indeed any assets that are not generation assets, but are</p>	<p>Article 5(4) provides that no consent of the Secretary of State will be required to a transfer or lease where paragraph (8) applies.</p> <p>Paragraphs 8(a) and 8(b) are quite separate and distinct situations where the Secretary of State's consent is not required either because there are no outstanding CA compensation issues or because the transferee is an undertaker under the Electricity Act 1989. Paragraph 8(b) refers to a position where there are no outstanding issues in relation to compensation in respect of the acquisition of land or effects upon land under the Order. Clearly this will not be relevant to offshore assets.</p> <p>The references in Articles 5(5), (6) and (10) should be to "<i>paragraph (1) or (2)</i>".</p> <p>In Article 5(5) the reference should be to "<i>paragraph (9)</i>".</p> <p>In Article 5(9)(a) the reference should be to "<i>Works Nos</i>".</p>

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		<p>wholly offshore and not subject to CA considerations)?</p> <p>In that regard, is the wording of Articles 5(5), (6) and (10) correct where it refers to 'paragraphs (1) and (2)'? The applicant is requested to confirm whether this reference should this be to 'paragraphs (1) or (2)', as per the made EA1 Order?</p> <p>The drafting in Article 5(5) makes reference excepting paragraph (8). This appears to be an erroneous reference. Can the applicant please review and explain this?</p> <p>In Article 5(9)(a), should the reference to 'Works No.' instead be to 'Works Nos.'?</p>	
Article 6	(Application and modification of legislative provisions)	<p>Subject to its relationship with Article 31 and Schedule 9 (which should also be explained) this article as drafted would provide a blanket authorisation for hedgerow removal. Can the applicant please explain how this accommodates circumstances where affected hedgerows are significant in biodiversity, landscape and visual or heritage terms? Can they also explain how it would relate to the discharge of requirements 14, 15, 17 and 21? Is there an argument for the inclusion of an important hedgerows approval requirement? How for example would mitigation works emerging from the Outline Landscape and Ecology Management Strategy (OLEMS) and / or an Arboricultural Method Statement be secured or agreed by the relevant local planning authority?</p> <p>It will be important to distinguish between hedgerow works authorised under the EA1 made Order and the additional works necessary to</p>	<p>Article 31 and Schedule 9 give powers to remove important hedgerows and other hedgerows within the Order Limits. The removal of all hedgerows within the Order Limits has been assessed in the ES.</p> <p>The Outline Landscape and Ecological Management Strategy (OLEMS) secured under Requirement 21 (see section 4.2 of the OLEMS) requires an Arboricultural Method Statement under which the Applicant must agree a scheme with the LPA for each hedgerow crossing before works to the hedgerow commence. The scheme must include details of the species composition of each hedgerow, any special considerations (such as protected species) and the proposed species replanting mix. A photographic survey must be undertaken to confirm the hedgerow condition, the bank/ditch profile, and to inform reinstatement techniques. Requirement 21 ensures that the OLEMS must be carried out as approved. Therefore approval of works to important hedgerows is already secured.</p> <p>At this stage detailed design of the haul road required for the</p>

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		<p>implement this Order. It is not clear that this provision assists in meeting that need.</p> <p>See also Article 31 and Schedule 9.</p>	<p>East Anglia THREE project has not been progressed. As a result, the Applicant requires powers to remove important hedgerows and other hedgerows within the Order Limits, and therefore across the entire cable corridor. If temporary works are not retained between the East Anglia ONE project and the East Anglia THREE project, it may be necessary to remove hedgerows previously reinstated by East Anglia ONE, should the detailed design for East Anglia THREE require a haul road in that location.</p>
<p>Article 7</p>	<p>(Defence to proceedings in respect of statutory nuisance)</p>	<p>Defences to statutory nuisance proceedings are justified by the priority accorded to Nationally Significant Infrastructure Projects (NSIPs) in National Policy Statement EN-1 (NPS EN-1) at section 4.14, which makes clear that the defence provision is conferred 'only to the extent that the nuisance is the inevitable consequence of what has been authorised'. The ExA takes an inevitable nuisance to be a residual nuisance (allowing for all applicable mitigations) which does not meet statutory nuisance thresholds, but is argued to be justified given the need for and benefit of the project.</p> <p>If no impact beyond statutory nuisance thresholds is expected once mitigation has been applied, it appears that this provision is seeking to provide a defence for occasional and incidental as distinct from inevitable instances of nuisance. Is the policy meant to apply to circumstances such as this and is this provision supported by EN-1? If the applicant is referring to similar provisions in made Orders, it would be useful to accompany these with an explanation of whether there was an inevitable nuisance.</p> <p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model</p>	<p>NPS EN-1 Section 4.14 makes clear that the defence provision is conferred "only to the extent that the nuisance is the inevitable consequence of what has been authorised". However, the Applicant considers that a nuisance which is the inevitable consequence of what has been authorised may also be occasional and incidental.</p> <p>Article 7 reduces the scope of the general defence granted by Section 158 of the PA2008 when applied to proceedings under Section 82 of the EPA 1990. It makes clear that (in the case of construction works) there is a defence to statutory nuisance proceedings only where the defendant shows that the nuisance:</p> <ul style="list-style-type: none"> • accords with a Section 60 Control of Pollution Act (COPA) 1974 Notice; or • accords with a Section 61 COPA 1974 Notice; or • accords with a Section 62 COPA 1974 Notice; or • cannot reasonably be avoided. <p>All the above are instances of where construction noise is an inevitable consequence of what has been authorised.</p> <p>The Applicant has sought to minimise the potential for statutory nuisance, but even though no impact beyond statutory nuisance thresholds is expected, that is not considered to be a reason not</p>

Provision	Function	ExA Issues	Applicant's Response
		<p>provision used as the source for this article.</p>	<p>to have the defence available in the event that, for reasons which could not reasonably have been avoided (and hence are an inevitable consequence) those thresholds are exceeded and statutory nuisance proceedings are instigated.</p> <p>A similar provision was included in the most recently granted offshore wind farm DCO – Dogger Bank Teesside A & B Article 13. In that instance the panel commented that <i>"[it] is satisfied that the limited harm caused by the disapplication of these provisions is justified by the public benefit to be derived from the application proposal"</i>.</p> <p>The current form of wording contained in the draft Order is in line with that used in the previous offshore DCOs and is considered appropriate for the draft Order.</p>
Article 8	(Street Works)	<p>This article does not appear to include a power to tunnel or bore under streets? This suggests that horizontal directional drilling (HDD) is not intended to be used to cross streets, although given the proposed use of EA1 infrastructure then little such work may be necessary. Does the applicant wish to have the right to use this technique? If so, does it consider that the current proposed wording is sufficient to enable HDD if this is required?</p> <p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.</p>	<p>HDD is not intended to be used. Article 8's wording is in line with that used in the previous offshore DCOs, save for the exclusion of:</p> <p><i>(a) break up or open the street, or any sewer, drain or tunnel under it;</i> <i>(b) tunnel or bore under the street;</i></p> <p>and is considered appropriate given that there will be no trenching or HDD of streets.</p>
Article 9	(Temporary stopping up of	The applicant is requested to consider whether subsequent practice gives rise to considerations	Article 9 is in substance the same form as is used in the previous offshore DCOs which contain the power to temporarily

Provision	Function	ExA Issues	Applicant's Response
	public rights of way)	that influence the approach taken in the model provision used as the source for this article.	stop up public rights of way.
Article 10	(Temporary stopping up of streets)	The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.	Article 10 is in line with the base wording, before project specific details are included, that is used in the previous offshore DCOs and is considered appropriate for the draft Order. Two of the previous offshore DCOs contain a provision that if a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent, that street authority shall be deemed to have granted consent. The Applicant proposes to amend the draft Order accordingly.
Article 11	(Access to works)	The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.	Article 11 is in line with that used in the previous offshore DCOs and is considered appropriate for the draft Order. Two of the previous offshore DCOs contain a provision that if a local planning authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent that local planning authority shall be deemed to have granted consent. The Applicant proposes to amend the draft Order accordingly.
Article 12	(Agreements with street authorities)	The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.	Article 12 is in line with the base wording, before project specific details are included, that is used in the previous offshore DCOs and is considered appropriate for the draft Order.
Article 13	(Discharge of water)	If pre-installed ducts developed for the EA1 project are to be used onshore (on the basis of which the Environment Agency's relevant representation suggests that it is satisfied that the project will cause limited impact to the water	The Applicant requires the discharge power for de-watering within the Order Limits. Water pumping and discharge may be required for the dewatering of excavations for jointing bays. Until the detailed design of the East Anglia THREE project is progressed it is not known where jointing bays will be located

Provision	Function	ExA Issues	Applicant's Response
		<p>environment onshore), is this power necessary? Could it be confined to specific locations or works rather than being a general power?</p> <p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.</p>	<p>within the cable route, save that these will be within the Order Limits.</p> <p>Article 13 is in line with the base wording (before project specific details are included) used in the previous offshore DCOs and is considered appropriate for the draft Order. The Walney DCO contains a provision that if a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent or approval that person shall be deemed to have granted consent or given approval, as the case may be. The Applicant proposes to amend the draft Order accordingly.</p>
<p>Article 14</p>	<p>(Authority to survey and investigate the land onshore)</p>	<p>The applicant is requested to consider if paragraphs (4) and (5) could be consolidated.</p> <p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.</p>	<p>The reason for the separation of these two paragraphs is because of the requirements of the body which has an interest in the land to be subject to the trial pits (if needed). The Applicant has adopted the position that was taken on East Anglia ONE where there is no qualifying statement to the provision of consent from either the Crown or Network Rail, whereas from the highway or street authority, their consent is not to be unreasonably withheld. As such the applicant does not consider it is necessary to consolidate these provisions and has considered subsequent practice.</p> <p>Article 14 is in line with the base wording, before project specific details are included, that is used in the previous offshore DCOs and is considered appropriate for the draft Order. Two of the previous offshore DCOs contain a provision that if a highway or street authority fails to notify the undertaker of its decision to grant consent for the making of trial holes within the highway boundary or a private street within 28 days of receiving an application for consent, that highway authority or street authority shall be deemed to have granted consent. The Applicant proposes to amend the draft Order accordingly.</p>

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<p>Article 15</p>	<p>(Compulsory acquisition of land)</p>	<p>On the face of it this article appears to provide a wide power to permit the applicant to CA any of the Order land, although in reality the applicant only seeks to acquire the freehold in a handful of plots (450, 453, 454, 454B, 454C, 457-463), within the context of a proposed hierarchy of approach by the applicant:</p> <ul style="list-style-type: none"> • to use existing EA1 infrastructure paths; • to take temporary possession only if this is sufficient; and if not • to acquire rights or subsurface interests only if these are sufficient; and if not or if negotiations fail; and • to carry out full CA (the 'backstop' power). <p>The approach is summarised in the paragraph from the explanatory memorandum extracted and underlined in this table.</p> <p>The applicant is requested to further explain this approach in the light of the following observations.</p> <ul style="list-style-type: none"> • The power to acquire the freehold is limited by article 17(2) and article 23(8). • Article 17(2) prevents the CA of any interest in the land contained in Schedule 5, other than the CA of the new rights for the purpose described in the Schedule. • Article 23(8) prevents the CA of the freehold and any existing rights in the land contained in Schedule 7. • Thus the power to CA land outright is limited to the land which is not contained in Schedule 5 or Schedule 7 and this may be 	<p>A general power for the acquisition of land is included within the Order but it is limited by the provisions of Schedule 5 (<i>Land in which only new rights etc., may be acquired</i>) and Schedule 7 (<i>Land of which temporary possession must be taken</i>).</p> <p><i>Acquisition of new rights (Schedule 5)</i></p> <p>The land listed in Schedule 5 is subject to acquisition of new rights, and additionally may be subject to temporary possession powers if also listed in Schedule 7. However the land listed in Schedule 5 cannot be subject to freehold acquisition.</p> <p><i>Temporary possession powers (Schedule 7)</i></p> <p>Schedule 7 sets out the interests over which temporary possession powers can be exercised, which can be exercised compulsorily if required.</p> <p>Plots listed in Schedule 7 <u>only</u> may be acquired temporarily but cannot be subject to acquisition of new rights or freehold acquisition (see the response to Article 23 below for further detail). However, some plots listed in Schedule 7 may also be listed in Schedule 5, in which case those plots are also subject to acquisition of new rights. Temporary possession powers may not be exercised over land subject to freehold acquisition, because in this case only the freehold can be compulsorily acquired.</p> <p><i>Freehold acquisition</i></p> <p>Land subject to freehold acquisition is not subject to temporary possession powers or subject to acquisition of new rights, and can only be compulsorily acquired through freehold acquisition.</p> <p><i>Retention of EA ONE temporary infrastructure</i></p> <p>If EA ONE temporary infrastructure was proposed to be retained for the benefit of reuse by East Anglia THREE this would be subject to entering into negotiated agreements with land owners</p>

Provision	Function	ExA Issues	Applicant's Response
		<p>argued to limit any 'backstop' power.</p> <p>It appears possible that the effect of reusing EA1 infrastructure might be to extend the duration over which these assets are used, beyond the life originally intended for them and assessed in the EA1 EIA process and secured in the made EA1 Order, a matter also raised with reference to Article 39. The hearing Agenda seeks an explanation of the implications of this effect, including for EIA purposes. If it is to proceed, it is not clear that this Order proposes to amend the EA1 Order with sufficient precision.</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and temporary possession (TP) articles.</p>	<p>to do so, or exercise of East Anglia THREE's temporary possession powers under the draft Order. EA ONE temporary infrastructure would otherwise not be retained on land where EA ONE had exercised temporary possession powers because there is no power in the EA ONE Order to extend the temporary possession powers for the benefit of the East Anglia THREE project.</p> <p>The Applicant has addressed the issue of Article 39 and Article 2(1) in the response to the respective articles elsewhere in this document.</p>
<p>Article 16</p>	<p>(Time limit for exercise of authority to acquire land compulsorily)</p>	<p>Some made Orders provide for longer periods for equivalently scaled projects. The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and temporary possession (TP) articles.</p>	<p>The Applicant has considered this further. Whilst some subsequent practice does provide for a longer period for the exercise of powers not all does. For example Dogger Bank Creyke Beck provides for 5 years whilst Dogger Bank Teesside A and B provides for 7 years. Whilst a longer period may be considered to provide greater flexibility the Applicant would need to justify why a longer period was necessary and has to also consider other issues such as the duration of any guarantees for the payment of compensation. The applicant considers that the 5 year period for the exercise of powers is sufficient and appropriate for this project.</p> <p>This form of wording is in line with the base wording, before project specific details are included as noted above, that is used in the previous offshore DCOs and is considered appropriate for</p>

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			the draft Order.
Article 17	(Compulsory acquisition of rights)	<p>Similarly to Article 15, this article provides a wide power to acquire rights compulsorily (both existing rights and new rights) or impose restrictive covenants over the Order land as may be required for any purpose for which land can be acquired under Article 15. The applicant has explained that this enables the undertaker to acquire rights over land including new rights and existing rights if applicable. It is not clear what existing rights the applicant may wish to CA. Is this article intended to be limited only to existing rights in the land in which the applicant also seeks to CA the freehold, given the assertion in the explanatory memorandum that all plots other than those are in Schedule 5 where CA powers are limited to the new rights listed in that Schedule?</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and temporary possession (TP) articles.</p>	<p>Article 17 does not provide any restriction on the acquisition of <u>existing</u> rights in land. Article 17(1) applies to all of the Order land. However, Article 17(2) repeats the restriction on the acquisition of <u>new</u> rights as set out in Schedule 5. A plot could be subject to the acquisition of new rights but also a need to acquire existing rights, for example, to the extent that existing rights might not be compatible with the exercise of the new rights acquired.</p>
Article 18	(Private rights)	<p>This article contains a slight variation in drafting from some previous made Orders as it is expressed as 'extinguishing' rights (or suspending them for the duration of TP in paragraph (3)).</p> <p>The DBT A&B made Order undertakes the same function in the following terms:</p> <p>'From the relevant date (see article 22(4)), the</p>	<p>The DBTA&B Order contains a blanket provision for the discharge from land of all rights, trusts and incidents for the acquisition of land (article 22) and in relation to the acquisition of rights a similar provision is noted which applies so far as the continuance would be inconsistent with the exercise of the new right (article 25).</p> <p>Article 18(8) of the draft Order states that '<i>Reference in this article to private rights over land includes reference to any trusts</i></p>

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		<p>land over which any new right is acquired is <u>discharged from all rights, trusts and incidents to which it was previously subject</u>, so far as their <u>continuance would be inconsistent</u> with the exercise of that new right'.</p> <p>This formulation appears to both be broader (in that no relevant rights are missed out) but yet more nuanced (rights are not discharged unless they are inconsistent with the needs of the project). The applicant is invited to consider and comment on this approach.</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and TP articles.</p>	<p><i>or incidents to which the land is subject'</i>. In this way Article 18 of the draft Order ensures that no relevant rights are missed out.</p> <p>Article 18(1) of the draft Order refers to the situation where the Applicant is acquiring the freehold interest in land, whereby the proposed use of such land means that private rights will need to be extinguished.</p> <p>Article 18(2) of the draft Order anticipates the situation where the Applicant is acquiring rights over land, and existing rights are extinguished to the extent that their continuance would be inconsistent with the new rights to be acquired.</p> <p>In connection with the temporary possession of land the Applicant only seeks to suspend those rights for the duration of possession so as to limit the compensation which is properly payable.</p>
Article 19	(Application of the Compulsory Purchase (Vesting Declarations) Act 1981)	The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.	<p>Article 19 is in line with that used in the previous offshore DCOs and is considered appropriate for the draft Order.</p> <p>However the Applicant notes Schedule 15 of the Housing and Planning Act 2016 amends elements of the Compulsory Purchase (Vesting Declarations) Act 1981 (1981 Act) which will repeal section 3 of the 1981 Act. This schedule is not yet in force. The Applicant will keep Article 19 under review and may need to revise the draft Order with the deletion of Articles 19(3), 19(4), 19(5) and 19(6)(a) to reflect the repeal of the provisions of section 3 of the 1981 Act.</p>
Article 20	(Acquisition of subsoil only)	The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model	Article 20 is in line with that used in the previous offshore DCOs and is considered appropriate for the draft Order.

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		<p>provision used as the source for this article.</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and TP articles.</p>	<p>The Applicant has addressed the issue of transfer of benefit and Article 2(1) in the response to the respective articles elsewhere in this document.</p>
<p>Article 21</p>	<p>(Acquisition of part of certain properties)</p>	<p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and TP articles.</p>	<p>Article 21 is in line with that used in the previous offshore DCOs and is considered appropriate for the draft Order.</p>
<p>Article 22</p>	<p>(Rights under or over streets)</p>	<p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in</p>	<p>The applicant proposes to amend the draft Order with the following additional wording (underlined) to reflect subsequent practice and to provide for the lawful use of air space.</p> <p>22.-(1) The undertaker may enter on and appropriate so much of the subsoil of <u>or air-space over</u>, any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil <u>or air-space</u> for those purposes or any other purpose ancillary to the authorised project.</p>

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		<p>response to Article 2(1) to this and to other CA, rights and TP articles.</p>	
<p>Article 23</p>	<p>(Temporary use of land for carrying out the authorised project)</p>	<p>Although this article is framed as providing powers for TP, Article 23(8)(a) permits the compulsory acquisition of new rights and the imposition of restrictive covenants in the land as defined in Article 17. These are CA powers and the ExA will need to be satisfied that the CA tests are met in relation to this land.</p> <p>As currently drafted Article 17 (1) permits the CA of rights / imposition of restrictive covenants over all of the Order land for any purpose for which that land may be acquired under Article 15 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.</p> <p>Article 15 permits the CA of any Order land as is required for the authorised project or to facilitate it or is incidental to it. "Order land" means the land shown on the land plan which is within the limits of land to be acquired and described in the Book of Reference.</p> <p>This means that, save for the land in Schedule 5, which is carved out for the CA of only new rights by Article 17(1), the undertaker can create new rights in all of the Order land. Thus by virtue of Article 23(8)(a), it appears that new rights and restrictive covenants can be imposed in any of the land in Schedule 7. This is not limited to the new rights that are described in Schedule 5 and effectively permits the CA of any right in the Schedule 7 land as long as it is required for the authorised project or to facilitate it or is incidental to it.</p>	<p>The comments referring to Article 17 (and Article 23) are noted. However no additional CA powers are proposed by Article 23(8); it does no more than clarify that those powers in Article 17 still remain notwithstanding the powers to take temporary possession of land for the authorised project.</p> <p>For the acquisition of new rights, Article 17(2) then restricts the application of Article 17(1) to that land and for those purposes stated in Schedule 5.</p> <p>Not all plots, except those of which the freehold is required, are listed in Schedule 5. Some plots of land, including plots 94, 95, 151, 151A, 152, 221, 224, 226, 229, 240, 301, 336, 385, 286, 388 and 443 appear only in Schedule 7 for the purposes of acquiring temporary rights. Once the authorised development has been constructed, the Applicant does not seek permanent rights over these plots. The Statement of Reasons/ Explanatory Memorandum will be amended to reflect this.</p> <p>Amended land plans have been prepared.</p>

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		<p>From the explanatory memorandum (see underlining) it appears that the applicant intends to limit the CA of new rights in the land in Schedule 7 to land which is also in Schedule 5 where the new rights are described. However, it is not clear that the applicant has achieved this through the current drafting. The applicant is invited to review the current drafting and advise if changes are required.</p> <p>In this respect, the applicant asserts that all plots, except those of which the freehold is required, are in Schedule 5. If this is correct then an amendment may not be necessary because all plots in Schedule 7 will also be in Schedule 5. If this is the case then effectively the applicant seeks CA powers over the entirety of the Order land and no land is only for temporary use.</p> <p>The Land Plans do not identify which land is for temporary use, permanent rights and freehold as would normally be expected – and in this regard the ExA would be greatly assisted by a revised set of annotated land plans categorising the nature of CA, rights or TP required for each plot.</p> <p>The combination of re-use of EA1 infrastructure for the application proposal together with the effects of phasing could extend the duration of TP effects on some parcels of land. Please explain how this has been taken into account for both TP and EIA purposes. Reference should also be made to the need to amend the made EA1 Order with precision (see Article 39.)</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where ‘the undertaker’ is referred to in</p>	

Provision	Function	ExA Issues	Applicant's Response
		<p>the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and TP articles.</p>	
<p>Article 24</p>	<p>(Temporary use of land for maintaining authorised project)</p>	<p>This article is relevant to consideration of the effect of re-using (or extending the use of) land that has already been subject to TP powers for the EA1 project.</p> <p>The re-use of EA1 infrastructure for the application proposal could extend the duration of TP for maintenance effects on some parcels of land. Please explain how this has been taken into account for both TP and EIA purposes. Reference should also be made to the need to amend the made EA1 Order with precision (see Article 39.)</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where ‘the undertaker’ is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and temporary possession (TP) articles.</p>	<p>Please see the response to Article 15 in relation to re-use of the EA ONE temporary infrastructure and the response to Article 39 in relation to amending the East Anglia ONE Order.</p> <p>The Applicant has addressed the issue of transfer of benefit and Article 2(1) in the response to the respective articles elsewhere in this document.</p>
<p>Article 25</p>	<p>(Statutory undertakers)</p>	<p>Where a statutory undertaker objects to CA and the objection is not withdrawn PA2008 s127 applies. Where a statutory undertaker or telecommunications code operator objects to the acquisition / extinguishment of rights or the removal of apparatus and the objection is not withdrawn PA2008 s138 applies. The inclusion of appropriate protective provisions will normally be sufficient to ensure the withdrawal of outstanding</p>	<p>We note the application of ss.127 and 138 albeit our understanding is that s.138, applies irrespective of whether a statutory undertaker makes a representation.</p> <p>The specific protective provisions for the statutory undertakers listed – Anglian Water, Network Rail, National Grid Gas and National Grid Electricity – are all based on the format agreed for the East Anglia ONE Order.</p>

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		<p>representations.</p> <p>Whilst Schedule 8 includes some protective provisions, it is not clear whether these are a complete list, or whether those included there have been agreed with the specific statutory undertakers whose land, rights or apparatus could be affected by the Order. The ExA seeks engagement from all statutory undertaker interested parties to confirm their satisfaction or otherwise with the protective provisions currently set out in Schedule 8 and to indicate whether concerns are resolvable through the examination process and so whether amended provisions are likely to be developed.</p> <p>Network Rail has made a relevant representation which clearly articulates such an objection. The ExA would wish to hear a progress update on negotiations between the applicant and Network Rail and views as to whether appropriate protective provisions can be drafted and what they might contain.</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and TP articles.</p>	<p>The following statements have been made by those parties in their relevant representations.</p> <p>National Grid</p> <p><i>The protective provisions included within the DCO substantially reflect National Grid's standard terms. However, National Grid will continue to review the details of the protective provisions included in the order as more details about the scheme are discussed with the Promoter.</i></p> <p>The Applicant is in discussion with National Grid to finalise terms.</p> <p>Anglian Water</p> <p><i>....AW would require the same protection measures as stipulated in the DCO for the East Anglia ONE project unless we are advised of any additional potential impact project THREE may have on Anglian Water.</i></p> <p>The protective provisions included in the draft Order follow those contained in the East Anglia ONE Order. As such, the Applicant considers that it has addressed AW's requirements in the draft Order.</p> <p>Network Rail</p> <p><i>In order for Network Rail to be in a position to withdraw its objection Network Rail requires:</i></p> <p><i>(a) agreement from the Applicant that the acquisition of rights over operational land and third party land (including the extinguishment of any rights) is on terms agreed with Network Rail for the protection of its statutory undertaking and that compulsory powers will not be exercised in relation to such land; and</i></p> <p><i>(b) that sufficient protection for Network Rail's statutory</i></p>

Provision	Function	ExA Issues	Applicant's Response
			<p><i>undertaking is put in place for the carrying out of works in the vicinity of the operational railway network.</i></p> <p>The draft protective provisions in the proposed Order are based on those agreed previously with Network Rail for the East Anglia ONE Order. In parallel with the application process the Applicant is engaging with Network Rail to seek agreement.</p> <p>The general protective provisions are considered to protect all other statutory undertakers but the Applicant does seek to engage s.138 subject to the provisions of schedule 8 of the proposed Order.</p> <p>Further updates will be provided to the ExA during the course of the examination.</p> <p>No other statutory undertakers made representations to engage s.127. Whilst Royal Mail has made a representation it is not considered that s.127 applies due to the lack of an interest in land affected by the proposed Order.</p>
Article 26	(Recovery of costs of new connections)	The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.	Article 26 is in line with that used in the previous offshore DCOs and is considered appropriate for the draft Order.
Article 27	(Operation of generating station)	Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and TP articles.	The Applicant has addressed the issue of transfer of benefit and Article 2(1) in the response to the respective articles elsewhere in this document.
Article 28	(Deemed licences)	The ExA understands the basis for the approach	<i>Splitting marine licences</i>

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	under the Marine and Coastal Access Act 2009)	<p>taken in this article and in Schedules 10 – 15 as arising from a view that a partial transfer of the benefit under a DML cannot be made and so separate DMLs are required for each element of the project that may require to be the subject of a transfer of benefit. This has the effect of requiring six DMLs.</p> <p>Recent Secretary of State decisions in relation to applications accompanied by Orders containing multiple DMLs have taken the view that such separation is not legally necessary. The Secretary of State has not amended the DMLs to remove duplicated provisions. However, given this development, combined with a larger than normal number of DMLs in this particular Order leading to apparently avoidable complexity, there is an argument that there would be benefits in consolidating these provisions to the extent that this is considered legally sound. The applicant and the MMO are asked to consider whether the DML Schedules can be simplified and the level of reiteration reduced, whilst still providing fully for the anticipated needs of this project. For example:</p> <ul style="list-style-type: none"> • Unless the construction phases are clearly intended to result in separate generation assets with separate ownerships, could the generation assets DMLs (Schedules 10 and 11) be unified? • Could OFTO DMLs (Schedules 12 and 13) be unified? • Could interconnection DMLs (Schedules 14 and 15) be unified and / or merged with a relevant OFTO DML? <p>The MMO's views are also sought on this issue.</p>	<p>Section 72(7) of the Marine and Coastal Access Act 2009 (MCAA 2009) provides:</p> <p><i>"On an application made by the licensee, the licensing authority which granted the licence (a) may transfer the licence from the licensee to another person and (b) if it does so, must vary the licence accordingly."</i></p> <p>What the MCAA 2009 does not provide is that the licensing authority "may transfer all or part of the benefit of the licence..." or words to that effect.</p> <p>The position is explained further in the Explanatory Memorandum:</p> <p>"4.3 <i>As drafted, the Marine and Coastal Access Act 2009 suggests that while a marine licence may be transferred in whole, it may not be transferred in part (or at least the drafting did not anticipate this). In light of this EATL's proposed approach to allow for a transfer of a marine licence for the transmission assets to the Offshore Transmission Owner (OFTO) under The Electricity (Competitive Tenders) for Offshore Transmission Licences Regulations 2010 (SI 2010/1903) is to create separate Deemed Marine Licences in the draft Order for the generation assets, transmission assets and the interconnection.</i></p> <p>4.4 <i>This approach has been adopted on a number of offshore wind farms consented under the 2008 Act, including East Anglia ONE. However, it has been developed further in the case of East Anglia THREE to take into account the potential for phasing of the project, as set out below.</i></p> <p>4.5 <i>Whilst Schedule 1 of the Order specifies the maximum capacity of the wind farm as being 1,200MW (with up to 172 turbines and 6 offshore substations), the</i></p>

Provision	Function	ExA Issues	Applicant's Response
		<p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and TP articles.</p>	<p><i>Environmental Statement has assessed the project as being constructed in a single phase and two phases, each comprising up to 600MW and with up to 86 turbines and three substations in each.</i></p> <p>4.6 <i>To provide for the situation where generation, transmission or interconnection assets in each phase (should the project be constructed in phases) will be held by different companies post-construction the approach has been taken of splitting the Deemed Marine Licences into six separate licences...</i></p> <p>4.7 <i>Using this approach it is possible to implement the development in two phases and to allow the transfer of the Deemed Marine Licences for each phase to separate companies if necessary. This also avoids difficulties with contractual indemnities and enforcement if several different companies are subject to ongoing obligations under one licence. However should EATL decide to construct the wind farm in one single phase of 1,200MW, licences 1 and 2 for both generation and transmission assets and the interconnection with East Anglia ONE can be discharged simultaneously."</i></p> <p><i>Immunity from enforcement</i></p> <p>It is also important to note that article 5(7) of the draft Order provides:</p> <p>"(7) <i>Where an agreement has been made in accordance with paragraph (1) or (2) –</i></p> <p>(a) <i>The benefit ("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;</i></p> <p>(b) <i>The transferred benefit shall reside exclusively with the transferee, or as the case may be, the lessee and the transferred benefit shall not be enforceable</i></p>

Provision	Function	ExA Issues	Applicant's Response
			<p><i>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."</i></p> <p>By splitting the DMLs in this way and including article 5(7), it is made clear that, following transfer of the DML by the undertaker, the undertaker will be immune from enforcement proceedings by the MMO except in the case of any preceding breach or where the undertaker is acting on behalf of the transferee.</p> <p>It is fundamental, from the undertaker's perspective that it should have the comfort, as provided in article 5(7), that following transfer of the DMLs it will not be vulnerable to enforcement proceedings save in the circumstances specified.</p> <p>It is also considered appropriate to keep the DMLs as currently drafted in order that, in the event of separate phases being undertaken by different entities, the contractor has a freestanding DML to which to refer.</p> <p>Accordingly it is considered that the splitting of DMLs in the manner proposed should remain in the draft Order.</p>
<p>Article 29</p>	<p>(Application of landlord and tenant law)</p>	<p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and TP articles.</p> <p>The applicant is requested to consider whether subsequent practice gives rise to considerations</p>	<p>Article 29 is in line with that used in the previous offshore DCOs and is considered appropriate for the draft Order.</p>

Provision	Function	ExA Issues	Applicant's Response
		that influence the approach taken in the model provision used as the source for this article.	
Article 30	(Operational land for the purposes of the 1990 Act)	The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.	Article 30 is in line with that used in the previous offshore DCOs and is considered appropriate for the draft Order.
Article 31	(Felling or lopping of trees and removal of hedgerows)	<p>Please refer to Article 6 and Schedule 9.</p> <p>This article contains a wide power to fell or lop any tree or shrub (31(1)) and remove any hedgerow within the Order limits (31(4)). While the applicant has limited removal of important hedgerows to those in Schedule 9, PINS' DCO drafting advice note AN15 says at para 24 that as a matter of good practice "[h]edgerows should be identified in a schedule to and on a plan accompanying the DCO. The schedule and plan could also helpfully identify those hedgerows that are 'important' hedgerows". The intention underlying this advice is not that the Schedule should only list important hedgerows to be removed. It is intended to facilitate engagement by interested parties in the question of whether any hedgerows should be removed, assisting by indicating those considered to be important.</p> <p>The ES refers to an Outline Landscape and Ecology Management Strategy (OLEMS), and the preparation of an Arboricultural Method Statement to secure mitigation in relation to tree and hedgerow works¹. The means by which these</p>	<p>The Applicant proposes to amend the draft Order to include two separate parts to Schedule 9. Schedule 9, Part 1 would list hedgerows to be removed which are not classified as important hedgerows, and Schedule 9, Part 2 would list important hedgerows. The important hedgerows plans will be updated to show all hedgerows to be removed within the Order Limits and which are referred to in the updated Schedule 9, Parts 1 and 2.</p> <p>In relation to the other matters raised, please see the Applicant's comments in relation to Article 6(1) above.</p>

¹ ES Chapter 23 at para 130 – Table 23.20 – Summary of potential impacts identified for ecological receptors. Paragraph 236 also states in relation to hedgerows: '[t]he substation would be subject to a specific Landscape Management Scheme which will include provision for replacement planting for all hedgerows permanently lost during substation construction.'

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		<p>would be agreed and secured is not clear from this provision.</p> <p>There is also an overlap between tree hedgerow works permitted under the EA1 made Order and additional works sought to be permitted under this Order. It would also assist to be clear which trees and hedgerows to be removed pre-exist both EA1 and the application proposal and which have been planted as EA1 mitigation. It may be that there is no case for a general felling, lopping or removal authorisation in this Order, or alternatively this provision could be targeted more closely to just those trees and hedgerows for which removal is sought for this project?</p> <p>Can the applicant please address these issues and then provide a Schedule that addresses the advice in AN15?</p>	
Article 32	(Certification of plans etc)	The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.	Article 32 is in line with that used in the previous offshore DCOs with the addition of wording used in the EAONE Order, and is considered appropriate for the draft Order.
Article 33	(Arbitration)	The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.	Article 33 is in line with that used in the previous offshore DCOs and is considered appropriate for the draft Order.
Article 34	(Requirements, appeals etc)	Do all parties agree that the requirements operating landward of mean low water and to which the appeals provisions under the 1990 Act are intended to apply are those listed in this provision (requirements 11-33 and 36)?	<p>Requirements numbered 11 to 32 and 36 are those which operate landward of MLW and hence are those to which the appeals provisions under the 1990 Act should apply.</p> <p>Requirement 33 (Ministry of Defence surveillance operations)</p>

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			operates seaward of MLW and is enforceable by the Secretary of State, and the appeals provisions under the 1990 Act should not therefore apply to this requirement. The draft Order will be amended accordingly.
Article 35	(Abatement of works abandoned or decayed)	No comments at this stage.	
Article 36	(Saving provisions for Trinity House)	A relevant representation from Trinity House seeks changes to incorporate what is now suggested to be a standard saving provision. What are those changes?	The Applicant understands that Trinity House is satisfied that the standard saving provision has been included at Article 36 of the draft Order.
Article 37	(Crown Rights)	<p>The Crown Estate (TCE) has requested equivalent provisions in a number of now made Orders. However, it appears that it may not be necessary for two reasons.</p> <ul style="list-style-type: none"> • In this case the only Crown land is land owned by TCE and their interests have been excluded from CA in the plot description in the Book of Reference (BoR). There is no Crown land owned on behalf of TCE over which CA could be sought (previous Highway Agency land has been transferred to Highways England and is no longer Crown land) and no PA2008 s135(1) consent is required. • PA2008 s135 (2) consent will be required from TCE for the provisions in the DCO which apply to Crown land. As currently drafted, this article appears to anticipate that this consent may not be forthcoming until after the Secretary of State has decided the 	The Crown Estate Commissioners have provided the Applicant with a signed letter of consent dated 22 June 2016. The letter is required for consent under section 135(2)(b) PA 2008 regarding interests in Crown land held by parties other than the Crown. As identified, this is the only consent required in the letter.

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		<p>application and also that it may be conditional (hence importing considerations that have not been examined or considered by the Secretary of State). It appears desirable that an unconditional Crown consent should be achieved within the examination period and if that is achieved, then the provision in Article 37(2) enabling a Crown consent after the making of the Order is not required.</p> <p>The applicant is requested to discuss this issue with TCE and to provide updated advice.</p>	
Article 38	(Protective provisions)	See Article 25 .	The Applicant's response is the same as for Article 25 above.
Article 39	(East Anglia ONE Order)	<p>The ExA has significant concerns about this article and the corresponding requirement 32. These arise from the fact that this is the first instance in which a new Order seeks to amend a made Order, and that this Order is not written to specifically amend the made EA1 Order, but seeks to do so in generic and hence potentially uncertain terms.</p> <p>For these reasons, the applicant is asked to provide legal submissions on the ability of one Order to amend another Order and for an explanation of why they consider this approach to be lawful and to be the most appropriate way to change the made EA1 Order as opposed to applying to change it in accordance with Schedule 6 of PA2008.</p> <p>Even if it is both lawful and appropriate, the drafting in this Order which describes the amendments sought is vague and would not</p>	<p>The Applicant considers that a development consent order may amend a previously made development consent order under the provisions of section 120(5) PA2008.</p> <p>Section 120(5) of the 2008 Act states</p> <p>"(5) <i>An Order granting development consent may –</i></p> <ul style="list-style-type: none"> <i>(a) Apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order;</i> <i>(b) Make such amendments, repeals or revocations of statutory provisions of local application as appear to the decision-maker to be necessary or expedient in consequence of a provision of the Order or in connection with the Order</i> <i>(c) Include any provision that appears to the decision-maker to be necessary or expedient for giving full effect to any other provision of the Order;</i> <i>(d) Include incidental, consequential, supplementary, transitional or transitory provisions and savings.</i>

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		<p>adequately secure amendments to the EA 1 Order in a manner that is sufficiently clear and certain. For example, there is no description of how the EA1 Order is to be varied. This article says that the EA1 Order is varied to the extent necessary to give effect to requirement 32 (decommissioning of work No. 5B and work No. 7). This approach appears provisionally to the ExA to be unacceptable. Arguably there needs to be sufficient clarity and certainty as to how the EA1 Order is varied, much in the same way as would be done in a DCO correction order or in amending legislation. This approach appears to be necessary to ensure that the interests of the EA1 undertaker (which may not always be EA One Ltd and / or associated with the EA Three undertaker) are properly protected. It also appears to be necessary so that relevant LPAs know the content and extent of both Orders, in case any enforcement action needs to be taken.</p> <p>Requirements 32 in the EA1 Order and the EA3 Order are almost identical. Both require a report detailing the extent of coastal retreat and any remedial works or mitigation measures which have been undertaken / are proposed for works at Bawdsy cliffs. Both state that if it cannot be demonstrated that the relevant works will not have a significant impact on coastal processes then they must be decommissioned. Both require this report to be submitted after a period of 24 years but before the expiration of 25 years following completion of the works.</p> <p>The EA1 works comprise:</p> <ul style="list-style-type: none"> • <i>Work No. 3B</i> – onshore connection works consisting of up to four cables and up to eight 	<p>(6) <i>In subsection (5) "statutory provision" means a provision of an Act or of an instrument made under an Act."</i></p> <p>However, the Applicant has now reconsidered whether it is necessary to make such amendments in light of the transfer provisions contained in Article 5 of the East Anglia ONE Order.</p> <p>Article 5(6) of the East Anglia ONE Order makes clear that on a transfer or lease under Article 5(1) or 5(2) the exercise of any benefits or rights shall be subject to the same restrictions, liabilities and obligations as would apply under the East Anglia ONE Order if those benefits or rights were exercised by the undertaker.</p> <p>Accordingly, in the event that the ducts proposed to be used by East Anglia THREE are transferred, so will the obligation (to assess the ducts in the manner and at the time specified in Requirement 32 of the East Anglia ONE Order) be so transferred.</p> <p>In practice, any divestment of the transmission works by East Anglia ONE will either be to SPR UK, and then by SPR UK to an OFTO, or directly to an OFTO. In either event the obligation under Requirement 32 of the East Anglia ONE Order to assess the ducts will be transferred.</p> <p>Requirement 32 in the draft East Anglia THREE Order relates to an assessment of coastal retreat since construction of the ducts. Since that obligation will pass to any transferee under Article 5(6) of the East Anglia ONE Order, Requirement 32 is not needed.</p> <p>Article 39 in the draft Order purports to vary the East Anglia ONE Order "to the extent necessary to give effect to Requirement 32." If Requirement 32 is no longer needed, nor is Article 39.</p>

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		<p>additional cable ducts laid underground from mean low water at Bawdsey Cliffs to Work No. 4 together with new temporary horizontal directional drilling compounds and a new temporary secondary construction consolidation site; and</p> <ul style="list-style-type: none"> • <i>Work No. 4</i> – up to twelve transition cable jointing bays, with associated cables, connecting Work No. 3B to Work No. 5 to the east of Ferry Lane, Bawdsey together with new temporary horizontal directional drilling compounds and a new temporary secondary construction consolidation site. <p>The EA3 works comprise:</p> <ul style="list-style-type: none"> • <i>Work No. 5B</i> – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from mean low water springs at Bawdsey Cliffs to Work No. 7 together with a temporary transition bay compound; and • <i>Work No. 7</i> – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 5B to Work No. 8, together with up to four transition bays and a temporary transition bay compound, and a new temporary vehicular access track from Ferry Road. <p>Requirement 32(3) in EA3 purports to supersede the requirement in EA1:</p> <p><i>Upon completion of Work No. 5B and Work No. 7 the obligation of the undertaker under paragraphs</i></p>	

Provision	Function	ExA Issues	Applicant's Response
		<p><i>(1) and (2) above shall supersede the obligation in respect of the ducts within which circuits have been pulled through, as part of Work No. 5B and Work No.7, pursuant to requirement 32 of the East Anglia ONE Order which shall then no longer take effect in respect of the relevant ducts.</i></p> <p>The explanatory memorandum describes this in the following terms:</p> <ul style="list-style-type: none"> • For this article – as underlined in this table. • For requirement 32 in this Order: <p><i>Requirement 32 - (Decommissioning of Work No. 5B and Work No. 7) provides that after a period of 25 years following completion of construction of Work No. 5B and Work No. 7, the undertaker must submit a report to the relevant planning authority detailing the extent of coastal retreat since construction of the relevant ducts, remedial works or mitigation measures. If it cannot be demonstrated that, taking into account any proposals for such remedial works or mitigation measures, Work No. 5B and Work No. 7 will not have a significant impact on coastal processes then those works must be decommissioned. This replicates the requirement included in the East Anglia ONE Order, but separates and transfers the obligations in respect of the project (i.e. the ducts and cables for East Anglia THREE) to the OFTO for East Anglia THREE. The remaining ducts and cables are still covered by the East Anglia ONE Order and will therefore be managed by the East Anglia ONE OFTO.</i></p>	

Provision	Function	ExA Issues	Applicant's Response
		<p>The applicant is attempting to transfer the costal reporting obligations in respect of the ducts and cables to be used by EA3, but for which consent was granted under the EA1 Order to the EA3 undertaker. It is not clear that this has been achieved without specific amending re-drafting to include detail of how the EA1 Order is to be varied in detailed terms.</p> <p>The applicant should also provide a more detailed explanation of the implications of this proposed amendment, including the implication that the ducts used by both EA1 and EA3 could potentially be there for more than 25 years after the completion of works for EA1 before a report is made.</p> <p>The original requirement in the EA1 Order was included at the request of the LPAs because the ES for that project only assessed significant effects for a 25 year period. The LPAs were concerned that EA3 & EA4 could extend the operational life of this facility at the landfall. This provision together with requirements 31 and 32 and the ES do not reference the EA1 decommissioning plan or process, either in terms of specifically amending it or securing a decommissioning process for EA3 that would be compliant with it.</p> <p>LPAs' and statutory nature conservation bodies' comments are also sought on the implications of this change for EIA and HRA purposes.</p> <p>Related technical issues are raised in respect of requirement 36 of the Order where EA3 Ltd is required to submit a scheme for approval by the relevant planning authority for the reuse of temporary works installed by EA1. Under</p>	

Provision	Function	ExA Issues	Applicant's Response
		<p>requirement 30 of the Order, EA3 Ltd is required to reinstate land used temporarily for construction of the connection works.</p> <p>On completion of the EA1 onshore cable laying works (including laying the ducts) EA1 Ltd is required to restore any land used temporarily for construction by requirement 28 of the EA1 Order. Restoration must take place as soon as reasonably practicable and in any event within 12 months of completion of the relevant stage of the connection works. The areas of land to be used temporarily will comprise, broadly, the land required for the haul road and soil storage areas along the onshore cable corridor, the primary and secondary construction consolidation sites, and temporary vehicular access tracks. The applicant has suggested in the explanatory report at paragraph 5.18 that '[t]he relevant planning authority, when approving details of any reinstatement proposals, may permit the partial retention of temporary works installed by [EA1] in a form which can then be reused by [EA3]. This would reduce the disruption which would otherwise be involved in [EA1] fully reinstating the temporary works and then [EA3] reinstalling them. However, the performance of this understanding is not secured at present. It will be at the discretion of the relevant LPA when discharging EA1 requirements. Is some form of security required? If so, what steps should be required and should these seek to amend the EA1 Order? Comments are sought from the applicant and LPAs.</p>	
<p>Missing provision from</p>	<p>Guarantees for payment of</p>	<p>There is no article to establish a mechanism of guarantee for payment of compensation for CA,</p>	<p>The applicant is proposing a Funding Agreement (as annexed to the Funding Statement – Document Reference 4.2) to be</p>

Provision	Function	ExA Issues	Applicant's Response
articles?	compensation for CA & TP	acquisition or rights and TP. It may be that this is to be secured another way (eg by a contract or deed under seal or a TCPA planning obligation). The applicant is requested to identify how this issue is to be managed. If LPAs are to be requested to administer planning obligations under the 1990 Act that should be made clear and their agreement and comments should be sought.	entered into between the Applicant and ScottishPower Renewables UK Limited. This can be enforceable by Specified Third Parties (as defined in the Agreement) in the event that the Applicant does not meet compensation obligations.
	CA provision for minerals	There is no article addressing the compulsory acquisition of land: minerals. Is there any need to incorporate Part 2 of Schedule 2 to the Acquisition of Land Act 1981 (minerals) in this Order? The applicant is requested to identify how this issue is to be managed.	Given the limited acquisition of freehold land the applicant does not consider it necessary to incorporate the minerals code.

Schedules

Schedule 1 (Authorised Project)

Includes requirements

Provision	Function	ExA Issues	Applicant's Response
Part 1	Authorised development <u>(primary works)</u>	Schedule 1 Work No. 1 provides that the maximum installed capacity of the wind farm is 1,200 MW, with up to 172 turbines, up to one accommodation platform, up to two meteorological masts, up to 12 buoys and inter-array cables. Work No. 2 provides for up to 6 offshore substations. Works Nos. 3-5A provide for cables to connect the works including interconnection with the EA1 wind farm. There is no reference to the phasing of any of the offshore works in Schedule 1, and these in turn would drive the phasing of onshore works from 5B to 69.	<i>Reference to Phasing</i> The Applicant would propose to secure the offshore phasing in the DCO by the addition of requirement 3(8) to read:
Part 2	Authorised development <u>(ancillary works)</u>	The explanatory memorandum discusses phasing and confirms at 4.1.1 that EA3 will either be constructed in a single phase or in a two phase approach.	<i>"3(8) in the case of two offshore phases, each phase shall comprise (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 600 MW comprising up to 86 wind turbine generators; (b) up to one accommodation platform (which may be constructed under one or other phase, but not under both phases); (c) up to two meteorological masts (one or both of which may be constructed under either phase, but not under both phases); (d) up to 12 buoys fixed to the sea bed (some or all of which may be constructed under either phase but not under both phases); (e) a network of subsea inter-array cables; (f) up to 3 offshore electrical stations."</i> <i>Timing of Phases</i> The transmission works (both onshore and offshore) will now be restricted to a single phase. The reference in the Statement of Reasons to the second phase starting approximately 18 months after the first phase was in connection with the phasing of onshore transmission works. Now that these will no longer be phased, the 18 month period is no longer relevant either to the onshore converter station (for which the land has been secured by negotiated agreement) or to the offshore array (for which the seabed has been secured by negotiated agreement), hence there is no longer any need to secure it.

Provision	Function	ExA Issues	Applicant's Response
		<p>Whether phased or not, the description of the maximum number of turbines in Work No. 1(a) accords with the assessed maximum number in the ES. However, there does not appear to be a limitation (by way of a description of the works in Schedule 1 or in a requirement in Schedule 3) which refers to a minimum number of turbines or allocates such a number between phases. The ES describes the proposed development as comprised between 100 and 172 turbines. Is it necessary to secure delivery of a minimum number of 100 turbines to ensure that what is constructed accords with what was assessed?</p> <p>If a two phase approach is taken it is suggested that it would be constructed in phases each consisting of up to 600MW and comprising 86 wind turbines, 3 electrical stations and a defined maximum length of subsea electrical connections. The accommodation platform, one or both meteorological masts and some or all buoys may be constructed as part of either phase. That being said, the sequence and timing of this division is not secured.</p> <p>Onshore, each phase will comprise of underground electrical connections comprising up to two transition bays and up to two circuits and one onshore substation / converter station.</p> <p>Requirement 11 provides that:</p> <p><i>The connection works (defined in article 2 as works 4B-69) may not be commenced until a written scheme setting out whether:</i></p> <p><i>(a) the connection works are to be carried out in a single onshore phase</i></p>	<p><i>Co-ordination of Phases</i></p> <p>As matters stand, each phase, if the phasing option is to be adopted, would be undertaken by East Anglia THREE Limited (EATL). This is no different from other offshore wind farm DCOs where the undertaker may, rather than choosing to build out the whole offshore array or sub-station, choose to construct them in more than one phase as part of construction programming. If a different undertaker were to construct one phase, any co-ordination arrangements would be addressed in the transfer agreement. Exercise of compulsory acquisition powers would no longer be relevant since the onshore transmission works will no longer be phased and the land on which the substation will be located has been secured through negotiated agreement.</p> <p><i>Minimum Number of Turbines</i></p> <p>The Applicant is unclear whether this is a reference to a minimum or a maximum number of turbines in each phase. If the reference is to a maximum, this would be secured by the proposed requirement 3(8) above. If the reference is to a minimum, there are well founded reasons for not making any reference to a minimum number of turbines in the DCO as set out in the Explanatory Memorandum (paragraphs 4.24 - 4.29).</p>

Provision	Function	ExA Issues	Applicant's Response
		<p><u>or in two onshore phases....</u></p> <p>have been submitted to and approved by the relevant planning authority.</p> <p>Article 2 defines:</p> <p>“single onshore phase” as ‘carrying out the connection works as a single construction operation’</p> <p>“two onshore phases” as ‘carrying out of the connection works as two separate construction operations linked to two offshore phases’</p> <p>“Two offshore phases” is defined as meaning the offshore works as two separate construction operations pursuant to the DMLs in Schedules 10,12 and 14 (phase 1) and 11,13 and 15 (phase 2).</p> <p>The explanatory memorandum at 4.8 explains that requirement 11(1)(a) secures the two phased approach by permitting the submission of pre-commencement details to the LPA, setting out whether the connection works will be carried out in a single onshore phase or in two onshore phases. However, it does not explicitly limit the phases to the ones contained in the DMLs, i.e. to splitting the works in half, and could permit the applicant and the relevant LPA to agree a different split between phases which might not have been assessed in the ES or agreed to by the MMO.</p> <p>DML condition 13 - Pre-construction plans and documentation requires submission of a construction and monitoring plan which must confirm whether works are to be carried out as a</p>	

Provision	Function	ExA Issues	Applicant's Response
		<p>single offshore phase or as two offshore phases.</p> <p>The ExA's initial understanding is that the definition of two offshore phases being tied to the split in the DMLs appears to secure the split of the development as set out in the DMLs. However, it would also be possible to amend the DMLs separately from the DCO by application to the MMO and this in turn could effectively amend the phasing in the DCO at a later stage without appropriate consideration of the implications of this for the onshore works.</p> <p>The effect of these provisions taken together would appear to enable the precise framing of a project phase to be varied from onshore, without consideration by the relevant offshore authority or reflection in offshore provisions, and vice versa from offshore.</p> <p>On this basis, the ExA asks the applicant and all relevant interested parties whether it would be better to secure the phasing in the DCO itself. This could be done by a specific requirement (for example, an addition to requirement 12) or by amending the definitions of onshore and offshore phases. Undertaking such work could also address broader questions about project definition and the relationship between project phases and transfers of benefit identified in the hearing agenda and earlier in this schedule.</p> <p>At 3.14 of the statement of reasons (SoR), the applicant states that if the project were to be constructed in two phases, the second phase would start approximately 18 months after the first, but there is nothing in the DCO to secure this. It is also unclear how a decision on phasing will be communicated to the landowners. Again,</p>	

Provision	Function	ExA Issues	Applicant's Response
		<p>some greater specification and clarity could address the possibility of a range of potential outcomes, including that the phases might be delivered concurrently, or might be delivered separately and it is not currently clear that the worst case scenario has been assessed. Whatever conclusion is reached on these points, the DCO needs to secure what has been assessed and consulted on.</p> <p>As the benefit of the DCO can be transferred in whole or in part, it could be possible for different undertakers to construct each phase, it should therefore be clear how the different phases will be co-ordinated and who will be responsible for exercising the powers in the DCO, in particular in relation to the CA powers.</p> <p>The applicant, MMO, LPAs, statutory nature conservation bodies, Environment Agency and all other interested parties participating in the hearing are invited to address these issues.</p>	
Part 3	Requirements	<p>The applicant is asked to explain why the requirements are set out as Part 3 to Schedule 1 as opposed to being a schedule in their own right?</p> <p>Any requirements based on model provisions should also be reviewed in the light of relevant practice in recent made Orders.</p>	This form of wording is in line with that used in the previous offshore DCOs and is considered appropriate for the draft Order.
Requirement 1	(Time limits)	No comments at this stage.	

Provision	Function	ExA Issues	Applicant's Response
Requirements 2 to 9	(Detailed offshore design parameters)	All offshore interested parties are asked to identify whether these parameters adequately describe the Rochdale envelope for this project and secure this.	See below.
		<p>Requirement 2</p> <p>References in the ES, the explanatory memorandum and the Order to the height of turbines or their components above sea level do not refer to the same terms. Requirement 2 uses lowest astronomical tide (LAT) and mean high water springs (MHWS) as references for turbine height, generator shaft or hub height and blade separation from sea level respectively. It sets the maximum hub height at 150.6m above LAT. MHWS is used as the reference point for minimum blade separation from sea level. Article 2(1) defines, and the explanatory memorandum additionally refers to, mean low water springs (MLWS), although this term is not used in the requirement. The explanatory memorandum² describes 150.6m from LAT as being equivalent to 150m from MLWS 'as assessed in the ES'. However, the ES³ describes turbine height above sea level with reference to a third measure – mean sea level (MSL). MSL is not defined in Article 2(1) or employed in this requirement. Nor does the ES show or reference MLWS. Due to the inconsistent use of these terms between these documents, it is not clear that the proposed design parameters accurately reflect and secure the worst case scenario assessed in the ES. The applicant and MMO are invited to</p>	<p>Requirement 2</p> <p>The Applicant does not consider the use of the terms to be inconsistent and standard naming conventions have been adopted, which are well known and recognised reference points. The units are all measured in metres and are therefore readily comparable, and could be converted to equivalents as necessary. Some of the reference points referred to have been requested by consultees; for example the RYA has requested a parameter for blade clearance of at least 22 metres above mean high water springs (MHWS).</p> <p>Therefore the assessment uses the reference points secured by the draft Order and there is no inconsistency with the parameters referenced in the draft Order.</p> <p>For example, in table 16.1.1 in appendix 16.1 (Aviation Radar Technical Appendix) the minimum blade clearance was modelled with respect to MHWS, whilst the minimum hub height and maximum tip height were assessed against LAT.</p> <p>The Applicant understands that the MMO is content with the use of the terms as contained in the draft Order.</p>

² Explanatory Memorandum: List of Order Parameters at pg 38 and footnote.

³ ES: Chapter 5, paragraph 26 and Table 5.4

Provision	Function	ExA Issues	Applicant's Response
		comment on the need for amendments to the requirement to ensure that development is delivered within the Rochdale envelope.	
		<p>Requirement 3 Should requirement 3(1) limit the total number of meteorological masts to two?</p> <p>In requirement 3(2) should “any” be changed to “the” because there can only be one accommodation platform?</p> <p>Requirement 3(6) provides that buoy dimensions must not exceed 4m in length. The maximum width and height of buoys are specified in the ES⁴ but the length is not specified there. The ES refers to a maximum 1m sea bed penetration, but this is not secured in the requirement.</p> <p>The applicant and MMO are invited to comment on consistency between the provisions in the requirement and the Rochdale envelope as assessed in the ES.</p>	<p>Requirement 3</p> <p>The Applicant will amend the next version of the draft Order to limit the total number of meteorological masts.</p> <p>For Requirement 3(2) the reference to 'any' should be retained as there may not be an accommodation platform if, for example, no offshore accommodation is required for offshore workers.</p> <p>In respect of Requirement 3(6) the Applicant understands that the MMO is content with the draft Order. The Applicant does not consider that there is a need for an additional parameter because the effect arises from the footprint of the buoy as a hazard on the surface of the water and the footprint from the anchor with regards to effects on the seabed, both of which have been assessed. The depth of seabed penetration does not give rise to an effect.</p>
		<p>Requirement 4</p> <p>Requirement 4(1) provides that the total cable protection volume for Work No. 3 (the platform links) is 28,480m³. The total volume identified is the same in the ES⁵ but it is shown there divided between two values: 21,600m³ and 6,880m³ respectively. The same approach has been taken to the information provided on Work No. 4 (the interconnection) and Work No. 5A (the export cable). The applicant and MMO are invited to</p>	<p>Requirement 4</p> <p>The total amount of cable protection is equivalent to the sum of the cable protection required where cables cannot be buried and will be surface laid, and protection required where cables will cross existing cables or pipelines.</p> <p>The numbers provided in Table 5.25 of the ES explain the maximum amount of cable protection that would be required where ground conditions may not allow for the full extent of cables to be buried / buried to a sufficient depth, and therefore</p>

⁴ ES: Chapter 5: paragraphs 136 - 137

⁵ ES: Chapter 5: Table 5.25 and Table 5.27

Provision	Function	ExA Issues	Applicant's Response
		<p>comment on consistency between the figures used in the requirement and the Rochdale envelope as assessed in the ES.</p>	<p>will require protection from mattresses. The numbers provided in Table 5.27 of the ES explain the maximum amount of cable protection required to protect the cables where they cross other cables or pipelines.</p>
		<p>Requirement 5</p> <p>Requirement 5(3)(b) provides for a maximum pin pile diameter of 4m, but the ES⁶ appears to have assessed a maximum dimension of 3.5m. The applicant and MMO are invited to comment on consistency between the figures used in the requirement and the Rochdale envelope as assessed in the ES.</p>	<p>Requirement 5</p> <p>There are a greater number of smaller piles (3.5m) than wider piles (4m), and therefore the overall footprint with smaller 3.5m piles is greater and the worst case to be assessed.</p> <p>As described in paragraph 45 of Chapter 5 of the ES the Rochdale envelope includes a four legged jacket (or square) foundation that would have four pin piles and a three legged jacket (or triangular) foundation that would have three pin piles. The maximum diameter for pin piles in a square jacket would be 3.5m and the maximum diameter in a triangular jacket would be 4m.</p> <p>Should a three legged (triangular) jacket be used for all turbine foundations, a maximum of 516 pin piles would be required. Should a four legged (square) jacket be used a maximum of 688 pin piles would be required. Given the greater number of piles required for the four legged (square) foundations the overall area of impact would be greater than a smaller number of wider piles for the three legged (triangular).</p> <p>It should be noted that there would be (up to) an additional 36 piles for offshore platform foundations.</p> <p>In relation to potential noise effects, the maximum hammer energy used for piling jackets will be 1,800kJ, although on a precautionary basis 2,000kJ was modelled for the noise impact assessment. Therefore the worst case assessment has been modelled because whichever pin pile diameter is used the maximum hammer energy will not exceed 2000kJ and by</p>

⁶ ES: Chapter 5, pg 20, Table 5.5

Provision	Function	ExA Issues	Applicant's Response
			assessing this on the basis of a four legged jacket (with a maximum pin pile diameter of 3.5m) the greatest number of piles (688) has been assessed.
		<p>Requirement 8</p> <p>Should “an” in both requirement 8(1) and 8(2) be changed to “the” because there can only be one accommodation platform?</p>	<p>Requirement 8</p> <p>As set out above, the draft Order will be changed to refer to 'any' in the event that an offshore accommodation platform is not required as a result of the construction/ operation and maintenance strategy selected.</p>
		<p>Missing requirements or plans</p> <p>Should there be a requirement to provide for the provision of aviation lighting to meet CAA requirements and the maximum illumination provided by this and by other offshore lighting?</p> <p>Should there be a means of requiring the WTG arrays to be laid out in a linear fashion, via the approval of a layout plan?</p>	<p>Missing requirements or plans</p> <p>The Applicant proposes to include an aviation requirement in the next version of the draft Order.</p> <p>Condition 13(a)(x) to the draft DMLs (generation assets) will be amended to refer to MGN543. In addition the Applicant proposes to update the references in the DMLs from MGN371 to MGN543.</p>
Requirement 10	(Offshore decommissioning)	No comments at this stage.	
Requirement 11	(Phasing and stages of authorized development onshore)	See Schedule 1 . In addition to requiring notification of phasing, 11(b) requires the applicant to submit details of the stages of the onshore connection works. This would enable pre-commencement details to be submitted and discharged for each stage of the work as opposed to submitting the details for the whole scheme before any works can commence. It would apply to requirements 16, 17, 18, 20, 22, 23, 24, 27, 29 and 36.	A clear distinction should be drawn between phasing of the works and stages of the works. The purpose of a staged approach onshore is to enable the contractor for the onshore connection works to carry out work on different lengths of the onshore cable route as part of his construction programming, either simultaneously or in sequence. Hence requirement 11(b) requires the relevant planning authority's approval of a written scheme for stages and many of the pre-commencement details can be submitted and discharged by stage of the work, as opposed to submitting the details for the whole scheme before

Provision	Function	ExA Issues	Applicant's Response
		<p>The applicant has not fully explained why they need this or how many stages they anticipate the project being split up into and, further to questions raised above, the ExA would welcome a clearer justification for this staged approach and explanation of its implications. Views are also sought from LPAs, statutory nature conservation bodies, Environment Agency and all other interested parties participating in the hearing.</p>	<p>any works on any stage can commence.</p> <p>In the case of discharge of requirements relating to schemes for approval of hedgerow removal, for example, this will enable discharges to be obtained for only hedgerows in a single stage rather than hedgerows throughout the entire cable corridor.</p> <p>In relation to a programme for construction activities offshore, this is dealt with at condition 13(b) of the DMLs.</p>
<p>Requirement 12</p>	<p>(Detailed design parameters onshore)</p>	<p>Can the applicant provide a clear explanation of the design relationship between EA1 and EA3, setting out which of the onshore elements provided by EA1 are proposed to be used or re-used by EA3?</p> <p>All onshore interested parties are asked to identify whether these parameters adequately describe the Rochdale envelope for this project and secure this.</p> <p>There is a possible discrepancy between existing ground level as recorded in requirement 12(5) (57m above ordnance datum (AOD)) and that of the finished compound and substation halls' floor levels as described in the ES⁷. Can the applicant please explain this?</p> <p>With reference to requirement 12(8)(a) it should be noted that the EA1 Offshore Wind Farm (Corrections and Amendments) Order 2016 amended the equivalent requirement 10(10)(a) in the made EA1 Order to delete a reference to the 'number, location, scale and appearance' of</p>	<p>In the event that it is proposed to do so, temporary works to be retained may include the haul road, construction consolidation sites, and any access improvements.</p> <p>Landscaping works undertaken by East Anglia ONE at the substation may also benefit the East Anglia THREE project.</p> <p>Save adjacent to the substation, East Anglia ONE will install duct(s) through which East Anglia THREE cables will be pulled. The ducts will therefore be installed prior to the East Anglia THREE construction phase.</p> <p>A fuller explanation of the interaction with the works authorised under the East Anglia ONE Order is contained in the Explanatory Memorandum paragraphs 5.10 to 5.15 (cable ducts), 5.16 to 5.19 (temporary works) and 5.20 to 5.22 (landscaping).</p> <p>In relation to the discrepancy between existing ground level and the finished compound and substation halls, this will be corrected to 54m AOD in the next version of the draft Order.</p> <p>The Applicant proposes to amend the draft Order in line with the East Anglia ONE Order. The number and location of the kiosks</p>

⁷ ES: Chapter 5: Table 5.48) refers to the substation halls' finished floor levels as approximately 54m AOD and rest of the compound as slightly lower.

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		<p>kiosks to be located in the onshore cable corridor and to replace this with a reference to 'details of the scale and appearance' of the kiosks. Can the applicant please explain the rationale for this change and whether it is sought here? Relevant local planning authorities' views on the need to approve the number and location of kiosks are sought.</p>	<p>will be defined by the number and location of the jointing bays and it is not therefore an appropriate matter to be approved by the relevant LPAs. The relevant LPAs will in any event approve their scale and appearance.</p> <p>In addition, paragraph 60 of the Design & Access Statement (Document Reference 8.3) notes that, where possible, jointing bays would be located at the edges of field boundaries or roads to reduce visual intrusion, and Table 1 of the Outline Landscape Ecological Management Strategy (Document Reference 8.6) also states that, "<i>Jointing bays would be located close to field boundaries and, where possible, microsited to avoid sensitive features including hedgerows, woodland and trees, watercourses and grassland areas which contain notable plant species. Impacts would be localised around jointing bay compounds and haul road. If kiosks are used, these would, where possible, be sited close to field boundaries and hedgerows for visual screening, whilst avoiding the rootzone.</i>"</p>
<p>Requirement 13</p>	<p>(Landfall method statement)</p>	<p>See Schedule 1. Can the applicant provide a clear explanation of the design relationship between EA1 and EA3, setting out which landfall elements provided by EA1 are proposed to be used or re-used by EA3 and the implications of this for the duration of those elements at the landfall site? Reference should be made to existing submitted material in the ES⁸ to draw this explanation together.</p>	<p>Save adjacent to the substation, East Anglia ONE will install duct(s) at the landfall through which East Anglia THREE cables will be pulled. The duct(s) will therefore be installed prior to the East Anglia THREE construction phase. The decision on whether "long" or "short" duct(s) will be installed will be made by East Anglia ONE Limited.</p> <p>East Anglia THREE would be responsible for all aspects of the pull through which will include:</p> <ol style="list-style-type: none"> 1. Construction of the transition bay: See Section 5.6.2.1 of the ES (which will use the same method as jointing bay construction, see Section 5.6.6.3 of the ES); 2. Access to beach should the short duct option be selected (see Section 5.6.2 of the ES);

⁸ ES: Chapter 5. Information describing the landfall works is contained within paragraphs 332-352 (construction), 353-355 (operation), and 356-357 (decommissioning).

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			<p>3. Access to the transition bay (see Section 5.6.6.2 of the ES);</p> <p>4. Pull through of cables; and</p> <p>5. Reinstatement at the transition bay location and beach access (see Section 5.6.2.6 of the ES).</p> <p>Requirement 32 of the East Anglia ONE Order secures future assessment of the ducts at landfall and their decommissioning in the event that any significant effects from coastal retreat cannot be mitigated.</p>
Requirement 14	(Provision of landscaping)	Underlined text in the explanatory memorandum for requirement 14 identifies the relationship between EA3 and EA1 in respect to landscaping. Can the applicant clarify if CA powers are sought over the land to which these works relate for the purpose of landscaping and identify which plots of land these works relate to so that relevant questions can be fully considered in the CA hearing?	Compulsory acquisition powers are sought by East Anglia THREE over areas of landscaping to be planted by East Anglia ONE. Powers are sought in respect of plots 450, 453, 454, 454B, 454C, 457, 458, 461, 462, 463, and 465 shown on the Land Plans. However, those powers would only be exercised with the consent of East Anglia ONE.
Requirement 15	(Implementation and maintenance of landscaping)	<p>Will any landscaping provided for EA1 (as both landscape / visual and natural environment mitigation) need to be removed and re-provided? Is any additional provision needed to secure this?</p> <p>Will phasing require the removal and re-provision of any landscaping provided for EA3? Is this adequately secured?</p>	<p>It is not envisaged that any landscaping to be planted by East Anglia ONE would need to be removed in order to implement the East Anglia THREE project.</p> <p>Along the cable corridor, if hedgerows were reinstated by East Anglia ONE as part of removal of the haul road, those hedgerows may need to be removed subject to detailed design and the location of the haul road for East Anglia THREE.</p> <p>Due to the single cable laying operation, no landscaping works will be removed and re-provided as a result of phasing.</p>
Requirement 16	(Highway accesses and improvements)	No comments at this stage.	
Requirement	(Fencing and	No comments at this stage.	

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17	other means of enclosure)		
Requirement 18	(Surface and foul water drainage)	No comments at this stage.	
Requirement 19	(Contaminated land and ground water)	No comments at this stage.	
Requirement 20	(Archaeology)	See comments in relation to works pre-commencement in Article 2(1) above.	See above – Article 2, definition of 'commence'
Requirement 21	(Ecological management plan)	See comments in relation to works pre-commencement in Article 2(1) above. See also Missing Provisions below in respect of mitigation for wintering <i>Brent</i> geese at Deben Estuary SPA/Ramsar.	See above – Article 2, definition of 'commence' In respect of mitigation for wintering Brent geese at the Deben Estuary SPA/Ramsar, please see Missing Provisions below.
Requirement 22	(Code of construction practice)	Requirement 23(1) and (2) appear to replicate requirement 22(f), albeit in more detail. Why it is necessary to have an artificial light emissions plan in the CoCP as well as a separate artificial light emissions plan and how they will interact? Requirement 24(1) and (2) appear to replicate requirement 22(d), albeit in more detail. Why it is necessary to have a noise and vibration management scheme in the CoCP as well as a separate scheme and how they will interact? See comments in relation to works pre-commencement in Article 2(1) above with respect to requirement 24.	It is acknowledged that there is some overlap between requirement 22(f) and requirement 23(1) and (2). However, requirement 22 relates to the approval of the CoCP in general (including an artificial light emissions plan) while requirement 23 expressly requires the prior approval of details of external lighting, removal of construction lighting on completion of the relevant stage of the connection works, and prior approval of a written scheme for the management and mitigation of artificial light emissions during the operation (not construction) of work no. 67. It is also acknowledged that there is some overlap between requirement 22(d) and requirement 24(1) and (2). However, requirement 22 relates to the approval of the CoCP in general
Requirement 23	(External lighting and control of artificial light emissions)		
Requirement 24	(Control of noise during		

Provision	Function	ExA Issues	Applicant's Response
	construction)		(including a written scheme for noise and vibration management during construction) while requirement 24 expressly requires the prior approval of a scheme which accords with the scheme in the outline CoCP, and which contains specified particulars, and with which the construction works must comply.
Requirement 25	(Construction hours)	No comments at this stage.	
Requirement 26	(Control of noise during operational phase)	See comments in relation to works pre commencement in Article 2(1) above.	See above – Article 2, definition of 'commence'
Requirement 27	(Traffic)	No comments at this stage.	
Requirement 28	(Port travel plan)	See comments in relation to works pre commencement in Article 2(1) above.	See above – Article 2, definition of 'commence'
Requirement 29	(European protected species onshore)	See comments in relation to works pre-commencement in Article 2(1) above.	See above – Article 2, definition of 'commence'
Requirement 30	(Restoration of land used temporarily for construction)	Can the applicant provide a clear explanation of the construction relationship between EA1 and EA3, setting out which land used temporarily by EA1 is proposed to be used or re-used by EA3 and implications of this for restoration?	The Applicant may decide to re-use the East Anglia ONE haul roads, construction consolidation sites and access improvements. Under Requirement 28 (Restoration of Land used temporarily for construction) of the East Anglia ONE Order, any land used temporarily for construction of the connection works <i>"must be reinstated in accordance with such details the relevant planning authority in consultation with the relevant highway authority may approve"</i> . It is therefore open to the relevant planning authority to approve a reinstatement scheme which includes an element of retention of temporary works for

Provision	Function	ExA Issues	Applicant's Response
			<p>such time as the authority may permit.</p> <p>In the event that those temporary works are used by East Anglia THREE they would be transferred under Article 5 by East Anglia ONE either via SPR UK or directly to East Anglia THREE. Under Article 5(6) of the East Anglia ONE Order the obligations with regard to reinstatement would also be transferred to East Anglia THREE. As such, once the land on which the temporary works retained by East Anglia ONE were no longer required by East Anglia THREE, East Anglia THREE would be required to reinstate the land under Requirement 28 of the East Anglia ONE Order.</p> <p>Any transfer of the obligations with regard to these temporary works would be notified to the relevant planning authority. To this purpose the Applicant proposes to include an additional requirement in the draft Order to notify the relevant LPAs on transfer of the retained temporary works. The Applicant also proposes to include a requirement which applies the East Anglia THREE parameters for the haul road and construction consolidation sites to the retained East Anglia ONE infrastructure.</p> <p>Under Article 23(3) (Temporary use of Land for carrying out the Authorised Project) of the East Anglia ONE Order the undertaker "shall 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...". As such, the retention of any temporary works for future re-use by East Anglia THREE would be subject to landowner agreement, or to exercise of temporary powers by East Anglia THREE under the draft Order.</p> <p>As well as any temporary works used by East Anglia ONE and re-used by East Anglia THREE, the corresponding requirement in the East Anglia THREE Order (requirement 30) will also apply to the temporary lay down area at the substation, which is the only area of temporary works to be retained between phase 1</p>

Provision	Function	ExA Issues	Applicant's Response
			and 2 of the East Anglia THREE project. The Applicant proposes a slight amendment to requirement 30 of the draft Order to clarify that the temporary lay down area (Work No 65) may be retained if approved by the relevant LPA.
Requirement 31	(Onshore decommissioning)	This relates to "cessation of the connection works or work 5B and 7" but the connection works are defined as works 4B-66, which includes works 5B and 7. Can the applicant please explain the difference and propose any necessary revisions to drafting?	It is proposed to amend requirement 31(1) to read: <i>"within three months of the cessation of commercial operation of the connection works an onshore decommissioning plan in respect of those works must be submitted to and approved by the relevant planning authority."</i>
Requirement 32	(Decommissioning of Work No. 5B and Work No. 7)	See Article 39 . If the EA1 Order is to be amended, this needs to be provided for in certain terms and the practical implications need to be explained, so that the ExA can assure itself that they have been assessed.	See above – Article 39. It is no longer proposed to amend the East Anglia ONE Order.
Requirement 33	(Ministry of Defence surveillance operations)	No comments at this stage.	
Requirement 34	(Requirement for written approval)	No comments at this stage.	
Requirement 35	(Amendments to approved details)	No comments at this stage.	
Requirement 36	(Re-use of temporary works)	See Article 39 . If the EA1 Order is to be amended, this needs to be provided for in certain terms and the practical	Given that a single cable laying operation is proposed and that there will be no retention of temporary works under the draft Order (save for the lay down area at the substation, which will be dealt with under Requirement 30), it is proposed to delete

Provision	Function	ExA Issues	Applicant's Response
		<p>implications need to be explained, so that the ExA can assure itself that they have been assessed.</p> <p>Requirement 36(b) refers to requirement 30 of EA1 which appears to relate to the skills strategy. Can the applicant confirm the correct reference and suggest any necessary amendment to drafting?</p>	<p>requirement 36.</p>
Missing Provisions from Requirements	Skills strategy	<p>The made EA1 Order included requirement 30 providing for a skills strategy. The applicant is requested to explain why there is no equivalent provision in this Order and relevant local planning authorities are asked to consider whether one is required.</p>	<p>An additional requirement relating to a skills strategy is not considered to be necessary given that the ES concluded that the East Anglia THREE project did not give rise to a significant effect on socio-economic receptors.</p>
	Transmission system	<p>The EA1 Offshore Wind Farm (Corrections and Amendments) Order 2016 inserted requirement 35 into the EA1 Order providing for the undertaker to notify the Secretary of State and the MMO of its choice to construct a generating station providing electrical output for HVDC or HVAC transmission. The applicant and the MMO are asked whether an equivalent requirement should be included here?</p>	<p>It is not considered that an equivalent requirement needs to be included since the purpose of requirement 35 in the East Anglia ONE Order effectively related to choice of project.</p>
	Marine Mammal Mitigation Protocol	<p>The EA1 Offshore Wind Farm (Corrections and Amendments) Order 2016 inserted requirement 36 into the EA1 Order providing for a MMMP. The applicant and the statutory nature conservation bodies are asked whether an equivalent requirement should be included here?</p> <p>Please note that relevant environmental considerations will be considered at a later stage in the examination.</p>	<p>The Applicant acknowledges the approach taken by the Secretary of State in respect of the East Anglia ONE Order. However, given that the DML secures mitigation for marine mammals through the MMMP, and provided that the MMMP is updated to deal with the pSAC mitigation, it is not considered that an equivalent requirement in the draft Order is necessary.</p>

Provision	Function	ExA Issues	Applicant's Response
	Wintering Brent geese mitigation	<p>The applicant and Natural England have agreed a timing restriction in relation to works at the Deben Estuary to avoid impacts on wintering Brent geese, which are a qualifying feature of the Deben Estuary SPA and Ramsar site. This is included in the ES and other submitted documents⁹. It is described as embedded mitigation and would be delivered through the implementation of the OLEMS (see requirement 21).</p> <p>The timing restriction does not appear to be secured in the DCO. It may be that requirement 21 will deliver all of the ecological aspects of the OLEMS, including the timing restriction in relation to Brent geese; however, at present it is not clear that this fully secures the restrictions so as to avoid impacts on the geese and the SPA/Ramsar. Comments are invited from the applicant and SNCBs.</p>	<p>In relation to a requirement in respect of mitigation for wintering Brent geese, this is already secured through the OLEMS at Table 2, which states:</p> <p><i>"During periods of construction works, from the 1st November to 28/29th February the only activities to be undertaken at the east side of the Deben Estuary (i.e. between Ferry Road and the Deben Estuary) would be:</i></p> <p><i>Walk-over site investigation or survey works; or</i> <i>Any inspections required to assess the integrity, safety and security of EATL assets; or</i> <i>Any response required for the purposes of ensuring the health, safety and security of employees, contractors and the general public,</i> <i>unless otherwise agreed with Natural England.</i></p> <p><i>Access by vehicle would be from either Access B or Access C (but not from both simultaneously to ensure that any disturbance is localised).</i></p> <p><i>For the same period, during times of severe weather (prolonged cold conditions), access will only be taken for the purposes of health, safety and security unless otherwise agreed with Natural England. The definition of 'severe weather' will be the same as that used to implement the Statutory Suspension of Wildfowl Shooting in Severe Winter Weather measure under the Wildlife and Countryside Act. The severe weather condition will come into force at 00h01 following the day when the relevant Secretary of State signs the necessary Statutory Instrument to bring the requirement into force. The suspension will end after a maximum period of 14 days unless otherwise extended by the Secretary of State through the signing of a</i></p>

⁹ ES: Chapter 24 (Table 24.3); HRA report (paras 299 to 303); and OLEMS (para 191).

Provision	Function	ExA Issues	Applicant's Response
			<p><i>further Statutory Instrument. After the end of the shooting season and up until the end of February, the same weather criteria shall apply, albeit without a signed order from the Secretary of State: EATL shall be responsible for monitoring local temperatures for this purpose."</i></p> <p>The Applicant has agreed with Natural England that these restrictions should be signposted in requirement 21 of the draft Order. The Applicant proposes to amend the draft Order accordingly.</p>

Schedule 2

(Streets subject to street works) sets out those streets which are to be the subject of street works.

No comments at this stage.

Schedule 3

(Public rights of way to be temporarily stopped up) sets out those public rights of way which are to be temporarily stopped up. From the commencement of this schedule, page numbering in the draft Order appears to be incorrect. The applicant is requested to review and correct the pagination in the remainder of the Order.

The Applicant will update the page numbering in the draft Order.

Schedule 4

(Access to works) sets out details of access points to the Works.

No comments at this stage.

Schedule 5

(Land in which only new rights etc may be acquired) sets out details of such land. It sets out the purposes for acquisition of new rights over specified plots. In accordance with the Guidance issued by the Secretary of State, it specifies rights that apply to the relevant plots set out in the Book of Reference and also details, where relevant, the restrictive covenants that apply to the relevant plots to protect the installed cables.

No comments at this stage.

Schedule 6

(Modification of compensation and compulsory purchase enactments for creation of new rights) sets out changes to the operation of the legislation relating to compulsory purchase, principally the material detriment provisions contained in Section A of the Compulsory Purchase Act 1965.

The paragraph numbering in this schedule appears to be incorrect (it starts at paragraph 37). The applicant is requested to review and correct this.

The Applicant will update the numbering in the draft Order.

Schedule 7

(Land of which temporary possession may be taken) sets out details of such land that may be occupied under temporary powers.

No comments at this stage.

Schedule 8

(Protective provisions) sets out protective provisions for statutory undertakers affected by the authorised development.

See comments above.

Schedule 9

(Removal of important hedgerows) sets out those important hedgerows to be removed.

See comments on Articles 6 and 31 above.

Schedules 10 - 15

(Deemed licences under Marine and Coastal Access Act 2009).

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

Provision	Function	ExA Issues	Applicant's Response
Generally	DMLs	The undertaker for all 6 DMLs is currently identified as EA3, but article 5 of the DCO permits the transfer of any of the DMLs to another person. This means that there could be different undertakers for each DML. It is therefore essential that it is clear how the DMLs will interact in practice.	Article 5(5) makes clear that in the event of an agreement under paragraphs (1) or (2) "references in this Order to the undertaker, except in paragraph (8), shall include references to the transferee or lessee".
All DMLs	Definitions	All of the DMLs refer at paragraphs 6 to 'section 106 of the 2004 Act'. This appears to be a reference to the Energy Act 2004, but this legislation is not defined under Part 1 1(1) in any of the DMLs. If a reference of this nature is to be used, the applicant is required to include a definition of " the 2004 Act " ... in PART 1 1(1) of each DML.	It is agreed that "The 2004 Act" should be defined in Part 1 in each DML.
	Amending provisions proposed by Trinity House	A representation from Trinity House (TH) seeks amendments to the following provisions in the DMLs. These changes are suggested to address work undertaken between TH, the Marine Management Organisation (MMO) and the Maritime and Coastguard Agency (MCA) to standardise DML provisions and, unless otherwise noted, the same amendment is sought to the relevant provision in all six DML schedules. The detail of the changes sought is set out in	In their letter of 18 April 2016 Trinity House state that "Trinity House, the MMO and the MCA have agreed standard navigation conditions to be used in Deemed Marine Licences (DMLs) for offshore renewable installations. Most of our comments seek to incorporate the most recent agreed standard wording into the six DMLs of this draft DCO". The majority of these amendments appear to be relatively minor, although in some instances they shorten the time periods for notifications and notices

Provision	Function	ExA Issues	Applicant's Response
		<p>the <u>representation</u>¹⁰ to which the ExA will refer during the hearing.</p> <p>TH, the MMO and the MCA as necessary will be invited to explain and justify the requested amendments and comments will be sought from the applicant and other interested parties.</p> <p>Paragraphs 1 Amendments are requested to sub-paragraphs (1) (definition of TH) and (4)(c) (correct address for TH).</p> <p>Paragraphs 7 Amendments are requested to drafting in sub-paragraphs (6), (8), (9) and (11), suggested to improve legal precision in provisions relevant to navigation.</p> <p>Paragraphs 8 Amendments are requested to drafting in sub-paragraphs (1), (2), (2)(c), (3) and (4) suggested to improve legal precision in provisions relevant to navigation. TH is asked to clarify that the changes proposed to sub-paragraphs (3) and (4) are intended to replace the entirety of those paragraphs as submitted.</p> <p>Paragraphs 13 TH seeks the deletion of references to <i>'and the MCA'</i> from sub-paragraphs (k) in these provisions.</p>	<p>(by referring to "days" rather than "working days") and requiring availability of aids to navigation to be reported daily rather than quarterly. There are also new provisions with regard to submission of an Emergency Response Co-operation Plan (ERCoP).</p> <p>The Applicant will await confirmation from Trinity House, the MMO and the MCA that these amendments relate to their current standard navigation conditions before considering whether to incorporate them in the draft Order.</p>

¹⁰ A copy of the Trinity House representation can be obtained from this link, from which suggested wordings for the requested amendments can be followed.

Provision	Function	ExA Issues	Applicant's Response
		<p>Paragraphs 14</p> <p>TH seeks the addition of reference to <i>'in consultation with the MCA'</i> at the end of the sentences in sub-paragraph (4) in these provisions.</p> <p>In Schedules 10, 12, 13, 14 and 15, TH seeks replacement provisions in sub-paragraphs (5), requiring MMO approval in consultation with the MCA for Emergency Response Cooperation Plans (ERCOPs) in accordance with MGN 543 and providing that the ERCOPs must be regularly reviewed and kept up-to-date.</p> <p>In Schedule 11 sub-paragraph 5 alone, TH asks whether it is necessary to refer to an ERCOP. The views of the MCA, the MMO and the applicant are sought.</p>	
Schedule 10	Generation assets phase 1	<p>Both Schedules permit the construction of an offshore wind turbine generating station (WTG station) with a capacity of 600mw comprising up to 86 WTGs (half of the amount permitted by the DCO) over the same area as the DCO, i.e. the DML limits are completely overlapping and both generating stations (phase 1 and phase 2) will be able to be constructed anywhere within the area identified in the works plans as Work No. 1. This means that there will need to be co-operation between each of the licence holders.</p> <p>Can the applicant explain how the licences will interact in practice, particularly if they are transferred to different undertakers? For</p>	<p>Co-operation between licence holders will be achieved since both licences will be granted to a single undertaker. In the event of transfer of one or other DML to different undertakers, the co-operation will be regulated in the transfer agreement. Article 5 (Benefit of the Order) requires notification of any transfer to the MMO.</p> <p>It is proposed to amend conditions 2(1), 2(3) and 2(7) to read:</p> <p>"the total number of [] forming part of the authorised scheme and the authorised scheme in Licence 2 (generation) taken together must not exceed [] (whether constructed under this Licence and/or Licence 2 (generation))."</p>
Schedule 11	Generation assets phase 2		

Provision	Function	ExA Issues	Applicant's Response
		<p>example, how will co-ordination of both generating stations be secured and how will the MMO be made aware of what is being constructed under which licence and who it should enforce against? A co-operation requirement between licence holders and the MMO such as in the made Hornsea 1 DCO or in the EA1 interconnections licences (see condition 20) could be an appropriate way to secure this.</p> <p>Both DMLs authorise the construction of an accommodation platform, up to 2 masts and up to 12 buoys - the total permitted by the DCO. Condition 2(1) states that, <u>within the authorised scheme</u>, the maximum number of accommodation platforms must not exceed one; condition 2(3) limits the masts <u>within the authorised scheme</u> to a total of two; and condition 2(7) limits the total number of buoys <u>within the authorised scheme</u> to 12. However, the "authorised scheme" is defined as "<i>the Work no 1 described in the licence</i>". The work described in the licence is not the same as the work described in the DCO, but is half of Work No. 1 to which the specific licence applies. These conditions therefore do not appear to prevent one accommodation platform / two masts / 12 buoys being built under each DML in breach of the DCO. The DMLs should not authorise activities that are outside of the works permitted by the DCO.</p> <p>The MMO and the applicant are asked to review and comment on this drafting and the applicant is asked to propose amendments to these DMLs.</p>	

Provision	Function	ExA Issues	Applicant's Response
Schedule 12	Transmission assets phase 1	These DMLs cover Works Nos. 2, 3 & 5a. Each DML authorises up to 3 offshore electrical stations, a network of subsea cables and up to 2 export cables. This indicates a complete split of the total development permitted for these works in the DCO. However the phase 2 licence has a higher maximum for cable length and protection for work No. 3 than work No. 2 (although the 2 add up to the maximum secured in the DCO). This difference is not explained.	In the transmission assets DMLs the reason why the phase 2 licence has a higher maximum for cable length and protection for Work no. 3 is because additional cable links are required between platforms if the project is constructed in two phases. The single phase approach requires 13 platform link cables, whereas a two phase approach requires 16 platform link cables. This is illustrated in diagrams 5.9 and 5.11 contained in Chapter 5 of the ES (Document reference: 6.1.5).
Schedule 13	Transmission assets phase 2	<p>The ExA needs to understand how the works will be co-ordinated between these overlapping DMLs if there are different licence holders for each one.</p> <p>Part 1 section 1 contains definitions of the generation and interconnection DMLs but no further reference is made to these in either DML. The definition appears to be superfluous.</p> <p>The MMO and the applicant are asked to review and comment on this drafting and the applicant is asked to propose amendments to these DMLs.</p>	<p>As set out above, co-operation between licence holders will be achieved since they are both granted to a single undertaker. In the event of transfer of one or other DML to a different undertaker, the co-operation would be regulated in the transfer agreement.</p> <p>The Applicant will amend the draft Order to delete definitions not used within the DMLs.</p>
Schedule 14	Interconnection phase 1	As with the other DMLs, the limits are overlapping. There needs to be clarity about how the works will be co-ordinated. It is also unclear if they overlap with the EA1 Order limits (although sensibly it appears that they must).	As set out above, co-operation between licence holders will be achieved since they are both granted to a single undertaker. In the event of transfer of one or other DML to a different undertaker, the co-operation would be regulated in the transfer agreement.

Provision	Function	ExA Issues	Applicant's Response
Schedule 15	Interconnection assets phase 1	<p>The DMLs do not define the EA1 offshore wind farm. While it is defined in the DCO it should also be defined in these DMLs as they are designed to be standalone licences.</p> <p>The MMO and the applicant are asked to review and comment on this drafting and the applicant is asked to propose amendments to these DMLs.</p>	The Applicant will include a definition of the East Anglia ONE Order in the DMLs.
Missing DML condition	Coexistence	Condition 10(l) of the DMLs included in the made EA1 Order call for a 'coexistence statement' demonstrating how the scheme design and construction methods, including cable specification, installation and armouring, reasonably avoids or mitigates effects on other marine users, including fisheries. The applicant and the MMO are asked to comment on the potential need for such a provision in these DMLs.	The Applicant does not consider a coexistence statement is required. In the case of the EA ONE Order the requirement for a coexistence statement was included on the recommendation of the ExA following a submission from NFFO which expressed concern that the applicant had not planned for elements of the design of the wind farm that "take reasonable account of fisheries coexistence issues", which it appears the applicant did not respond to at the time (see paragraphs 4.187 – 4.188 of the EA1 ExA report and recommendations).