

East Anglia THREE
Offshore Windfarm

East Anglia THREE

Schedule of Offshore DCO Drafting (Hornsea & Triton Update)

Document Reference – Deadline 4/ Comparison of
draft DCO with Offshore Orders (Update)

SCHEDULE OF OFFSHORE DCO DRAFTING

In advance of and during the Development Consent Order Issue Specific Hearing the Examining Authority requested that the Applicant reduce to writing instances of DCO drafting in relation to certain specified elements of the draft East Anglia THREE Development Consent Order. These instances are noted in the table attached to this note.

Drafting in the draft East Anglia THREE Offshore Wind Farm Order, Revision A, has been cross referenced with "the previous offshore DCOs" noted below which reflect the current drafting related to offshore wind farm projects:

- 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;
- Dogger Bank Teesside A and B Offshore Wind Farm Order 2015;
- Hornsea Two Offshore Wind Farm Order 2016; and
- Triton Knoll Electrical Systems Order 2016.

In the attached note, the column headed East Anglia THREE Offshore Wind Farm Order, and shaded blue, contains extract drafting from the draft DCO while the previous offshore DCOs drafting is shown in the unshaded columns. All text within the document is black save for two exceptions:

- Text coloured red in the East Anglia THREE Offshore Wind Farm Order column indicates drafting not used in the other Offshore Orders;
- Text coloured red in the other Offshore Orders indicates drafting not used in the draft East Anglia Three Offshore Wind Farm Order.

Article	EA Comment	East Anglia THREE Offshore Wind Farm Order	East Anglia ONE Offshore Wind Farm Order 2014	Burbo Bank Extension Offshore Wind Farm Order 2014	Walney Extension Offshore Wind Farm Order 2014	Horsea One Offshore Wind Farm Order 2014	Dogger Bank Creyke Beck Offshore Wind Farm Order 2015	Dogger Bank Teesside A and B Offshore Wind Farm Order 2015
Definition - "commence"	In comparison with definitions in similar made Orders, this definition in respect of offshore 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.	"commence" means, (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licence, save for pre-construction surveys and monitoring and, (b) in respect of any other works comprised in the authorised project, beginning to carry out any material operation (as defined in section 155(4) of the 1990 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the words "commencement" and "commenced" shall be construed accordingly.	"commencement" means, in relation to the authorised project seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licence, save for pre-construction surveys and monitoring and, in respect of any other part of the authorised project, beginning to carry out any material operation (as defined in section 155(4) of the 2009 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the words "commencement" and "commenced" shall be construed accordingly.	"commence", unless otherwise provided for, means beginning to carry out any licensed marine activities referred to in the deemed marine licence at Schedule 2 (deemed licence under the Marine and Coastal Access Act 2009 – generation assets) and Schedule 3 (deemed licence under the Marine and Coastal Access Act 2009 – transmission assets) and any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised project other than archaeological investigations, environmental surveys and monitoring, investigations for the purpose of assessing ground conditions and "commencement" shall be construed accordingly.	(b) in relation to all other works, beginning to carry out any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the authorised project save for operations consisting of pre-construction surveys and/or monitoring, site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the words "commencement" and "commenced" shall be construed accordingly.	"commence", except where otherwise provided for, means commencing any material operation (as defined in section 155 of the 2009 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure or the temporary display of site notices or advertisements; and "commencement" and "commenced" must be construed accordingly.	(b) in any other case, begin to carry out any material operation (as defined in section 155 of the 2009 Act) in respect of the authorised development or forming part of the authorised project except for operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure or the temporary display of site notices or advertisements; and "commencement" and "commenced" must be construed accordingly.	(b) in any other case, begin to carry out any material operation (as defined in section 155 of the 2009 Act) in respect of the authorised development or forming part of the authorised project except for operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure or the temporary display of site notices or advertisements; and "commencement" and "commenced" must be construed accordingly.
Definition - "maintain"	"maintain" 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 (DBT&A&B) provides as follows: "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. Is there any reason why an equivalently limited and simple provision could not be used here?"	"maintain" includes inspect, repair, adjust, alter, remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (ancillary works) and any component part of any wind turbine generator, offshore electrical station, accommodation platform or meteorological mast described in Part 1 of Schedule 1 (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and "maintenance" shall be construed accordingly.	"maintain" includes inspect, maintain, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (Ancillary Works) and any component part of any wind turbine generator, offshore substation or meteorological mast described in Part 1 of Schedule 1 (Authorised Development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and "maintenance" shall be construed accordingly.	"maintain" includes inspect, maintain, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (ancillary works) and any component part of any wind turbine generator or offshore substation described in Part 1 of Schedule 1 (authorised development) (but not including the alteration removal or replacement of foundations) to the extent assessed in the environmental statement; and "maintenance" shall be construed accordingly.	"maintain", unless otherwise provided for, includes inspect, repair, adjust, alter, remove, reconstruct and replace any of the authorised development, and any derivative of "maintain" shall be construed accordingly.	"maintain", includes, to the extent assessed in the [Environmental Statement] (a) inspect, repair, adjust and alter; and (b) in respect of any of the ancillary works and any component part of any wind turbine generator, offshore accommodation platform, offshore HVAC collector substation, offshore HVDC converter station, offshore reactive compensation substation or Work No. 10 also includes remove, reconstruct and replace, but does not include the alteration, removal or replacement of foundations; and "maintenance" shall be construed accordingly.	"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.	"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.
Definition - "Statutory Undertaker"	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?	"statutory undertaker" means any person falling within section 127(B) of the 2008 Act;	"statutory undertaker" means any person falling within section 127(B), 128(5) or 129(2) of the 2008 Act;	NA	Not defined.	Not defined.	"statutory undertaker" means a person falling within section 127(B) of the 2008 Act BUT in art 31(2) is added "(2) In this article, a reference to a statutory undertaker includes a reference to a public communications provider (as defined in article 32(3) (recovery of costs of new connections))."	31 (2) In this article, "statutory undertaker" means— (a) a person falling within section 127(B) of the 2008 Act; and (b) a public communications provider (as defined in section 151(1) of the Communications Act 2003).
Definition - "undertaker"	"undertaker" This is a key term in the draft Order as it describes the 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), DBT&A&B, Horsea 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 Bizzos). A delivery body model is not used in this draft and there are no definitions of phases or delivery bodies for phase delivery. 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 those powers were ever needed 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 (ie 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 its use in the Order, this point is not raised individually in every provision below to which it is relevant.	"undertaker" means East Anglia THREE Limited;	"undertaker" means East Anglia ONE Limited	"undertaker" means DONG Energy Burbo Extension (UK) Limited;	"undertaker" means DONG Energy Walney Extension (UK) Limited and any other person who has the benefit of that provision in accordance with article 5;	"undertaker" is to be construed in accordance with article 3; Article 3 (5) Any reference in this Order to the "undertaker" means Heron Wind Limited except that— (a) insofar as relevant to Work No. 2 and related associated development or ancillary works, "undertaker" means Njord Limited; (b) insofar as relevant to Work No. 3 and related associated development or ancillary works, "undertaker" means Vi Aura Limited; and (c) "undertaker" means two or more of Heron Wind Limited, Njord Limited or Vi Aura Limited, where this is necessary for the fulfilment of the obligations in this Order.	"undertaker" means, subject to article 8(2) (consent to transfer benefit of Order)— (a) in relation to the Project A offshore works, the Project A offshore works, any other authorised development associated with those works and related ancillary works, Bizzo 1; (b) in relation to the Project B offshore works, the Project B offshore works, any other authorised development associated with those works and related ancillary works, Bizzo 4; (c) in relation to the shared works, any other authorised development associated with those works and related ancillary works, Bizzo 1 and Bizzo 4; and (d) in any other case, Bizzo 1 and Bizzo 4;	"undertaker" means, subject to article 8(3) (consent to transfer benefit of Order)— (a) in relation to Project A and related ancillary works, Bizzo 2; (b) in relation to Project B and related ancillary works, Bizzo 3; (c) in relation to the shared works, Bizzo 2 and Bizzo 3; and (d) in any other case, Bizzo 2 and Bizzo 3;
Development consent etc. granted by the Order	3.—(1) Subject to the provisions of this Order and to the requirements of the Order, development consent for the authorised development; and (2) Subject to the requirements and conditions in the deemed marine licence, Work Nos. 1 to 5A must be constructed anywhere within the Order limits seaward of MHWS and Work Nos. 5B to 69 must be constructed anywhere within the Order limits landward of MLWS.	Development consent etc. granted by the Order 3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted— (a) development consent for the authorised development; and (b) consent for the ancillary works, to be carried out within the Order limits. (2) Subject to the requirements and conditions in the deemed marine licence, Work Nos. 1 to 5A must be constructed anywhere within the Order limits seaward of MHWS and Work Nos. 5B to 69 must be constructed anywhere within the Order limits landward of MLWS.	3.— Development consent etc. granted by the Order (1) Subject to the provisions of this Order and to the Requirements the undertaker is granted— (a) development consent for the authorised development; and (b) consent for the ancillary works, to be carried out within the Order limits. (2) Subject to the Requirements, Works No. 1 to 3A shall be constructed anywhere within the Order limits seaward of mean high water springs and Works No. 3B to 41 shall be constructed anywhere within the Order limits landward of mean low water.	3.— Development consent etc granted by the Order (1) Subject to the provisions of this Order and to the Requirements in Part 3 of Schedule 1 the undertaker is granted— (a) development consent for the authorised development; and (b) consent for the ancillary works in Part 2 of Schedule 1, to be carried out within the Order limits. (2) Subject to the Requirements, the works comprised in the authorised development may be constructed anywhere within the Order limits.	3.— Development consent granted by the Order (1) Subject to the provisions of this Order and the requirements, development consent is granted to the following persons in respect of the scheduled works, along with associated ancillary works related to those works— (a) to Njord Limited to construct, maintain and operate Work No.2; (b) to Vi Aura Limited to construct, maintain and operate Work No.3; and (c) to Heron Wind Limited to carry out all other works comprising the authorised development. (2) Each of the scheduled works must be constructed and maintained within the limits of deviation for that work.	3.— Development consent, etc. granted by the Order (1) Subject to the provisions of this Order and to the Requirements, Bizzo 1 is granted— (a) development consent for the Project A offshore works, the Project A offshore works, any other authorised development associated with those works; and (b) consent for related ancillary works, to be carried out within the Order limits. (2) Subject to the provisions of this Order and to the Requirements, Bizzo 4 is granted— (a) development consent for the Project B offshore works, the Project B offshore works, any other authorised development associated with those works; and (b) consent for related ancillary works, to be carried out within the Order limits. (3) Subject to the provisions of this Order and to the Requirements, Bizzo 1 and Bizzo 4 are jointly granted— (a) development consent for the shared works and any other authorised development associated with those works; and (b) consent for related ancillary works, to be carried out within the Order limits. (4) Despite anything in this Order or shown on the offshore works plans, the undertaker may construct either Work No. 2B or Work No. 2BC but not both. (5) Schedule 1 (authorised project) has effect.	3.— Development consent granted by the Order (1) Subject to the provisions of this Order and to the Requirements— (a) Bizzo 2 is granted development consent for Project A and related ancillary works; (b) Bizzo 3 is granted development consent for Project B and related ancillary works; and (c) Bizzo 2 and Bizzo 3 are jointly granted development consent for the shared works, to be carried out within the Order limits. (2) Schedule 1 (authorised project) has effect.	
Article 4 - Power to construct and maintain the authorised project	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. See for example the equivalent provision in the made Dogger Bank Teesside A & B Order: (2) Paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under Part 4 of the 2009 Act (marine licensing). Can the applicant and the Marine Management Organisation (MMO) advise whether this absence has any adverse effect? 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.	Power to construct and maintain authorised project The undertaker may at any time construct and maintain the authorised project, except to the extent that this Order or an agreement made under this Order provides otherwise.	NA	NA	NA	NA	4.— Maintenance of authorised project (1) The undertaker may at any time maintain, and maintain from time to time, the authorised project except to the extent that this Order or any agreement made under this Order provides otherwise. (2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under Part 4 of the 2009 Act (marine licensing).	4.— Maintenance of authorised project (1) The undertaker may at any time maintain, and maintain from time to time, the authorised project except to the extent that this Order or any agreement made under this Order provides otherwise. (2) Paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under Part 4 of the 2009 Act (marine licensing).
Article 7 - Defence to proceedings in respect of statutory nuisance	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) 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 EA 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. 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 not, the applicant is referring to similar provisions in made Orders, it would be useful to accompany these with an explanation of whether there is an inevitable nuisance. 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.	Defence to proceedings in respect of statutory nuisance 7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if— (a) the defendant shows that the nuisance— (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974; or (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or (b) the defendant shows that the nuisance— (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in compliance with requirement 26 (control of noise during operational phase); or (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided. (2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised project.	7.— Defence to proceedings in respect of statutory nuisance (1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if— (a) the defendant shows that the nuisance— (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974; or (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or (b) the defendant shows that the nuisance— (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in compliance with Requirement 26 (control of noise during operational phase); or (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided. (2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised project.	NA	8.— Defence to proceedings in respect of statutory nuisance (1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if— (a) the defendant shows that the nuisance— (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974; or (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or (b) the defendant shows that the nuisance is a consequence of the use of the authorised project and that it cannot reasonably be avoided. (2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.	8.— Defence to proceedings in respect of statutory nuisance (1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if— (a) the defendant shows that the nuisance— (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974; or (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or (b) the defendant shows that the nuisance is a consequence of the use of the authorised project and that it cannot reasonably be avoided. (2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.	12.— Defence to proceedings in respect of statutory nuisance (1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance— (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974; (b) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; (c) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project in compliance with Requirement 26 (control of noise during operational phase); or (d) is a consequence of the use of the authorised project and that it cannot reasonably be avoided. (2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded) do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project. (3) This article does not affect the application to the authorised project of section 158 of the 2008 Act (nuisance: statutory authority).	13.— Defence to proceedings in respect of statutory nuisance (1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance— (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974; (b) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; (c) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project being used in compliance with Requirement 30 (control of noise during operational phase); or (d) is a consequence of the use of the authorised project and that it cannot reasonably be avoided. (2) Section 61(9) of the Control of Pollution Act 1974 (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded) do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project. (3) This article does not affect the application to the authorised development of section 158 of the 2008 Act (nuisance: statutory authority) or any rule of common law having similar effect.

Requirement	PINS Comment	East Anglia THREE Offshore Wind Farm Order	East Anglia ONE Offshore Wind Farm Order 2014	Burbo Bank Extension Offshore Wind Farm Order 2014	Hornsea One Offshore Wind Farm Order 2014	Dogger Bank Creyke Beck Offshore Wind Farm Order 2015	Dogger Bank Teesside A and B Offshore Wind Farm Order 2015
Structure	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.	Requirements were placed in Schedule 1 which also defined the project.	Requirements were placed in Schedule 1 which also defined the project.	Requirements were placed in Schedule 1 which also defined the project.	Requirements were placed in Schedule 1 which also defined the project.	Requirements were placed in Schedule 1 which also defined the project.	Requirements were placed in Schedule 1 which also defined the project.

Article	ExA Comment	East Anglia THREE Offshore Wind Farm Order (Version 2)	The Hornsea Two Offshore Wind Farm Order 2016
Definition - "commence"	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.	"commence" means, (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for pre-construction surveys and monitoring and, (b) in respect of any other works comprised in the authorised project, beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the words "commencement" and "commenced" are construed accordingly;	"commence" means commence any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions and remedial work in respect of any contamination or other adverse ground conditions; and "commencement" must be construed accordingly;
Definition - "maintain"	"maintain"... 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: "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...' Is there any reason why an equivalently limited and simple provision could not be used here?	"maintain" includes inspect, repair, adjust, alter, remove, reconstruct and replace, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (ancillary works) and any component part of any wind turbine generator, offshore electrical station, accommodation platform or meteorological mast described in Part 1 of Schedule 1 (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and 'maintenance' is construed accordingly;	"maintain" includes inspect, repair, adjust, alter, remove, reconstruct and replace any of the authorised development; and any derivative of "maintain" must be construed accordingly;
Definition "Statutory Undertaker"	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?	"statutory undertaker" means any person falling within section 127(8) of the 2008 Act and a public communications provider as defined in section 15(1) of the Communications Act 2003;	Not defined

<p>Definition - "undertaker"</p>	<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 (DBCB), 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. 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" means East Anglia THREE Limited;</p>	<p>"undertaker" means, subject to article 35(8) (transfer of benefit of Order),—</p> <p>(a) for the purposes of constructing, maintaining and operating the Project A works and any associated development or ancillary works relating to those works, Optimus Wind;</p> <p>(b) for the purposes of constructing, maintaining and operating the Project B works and any associated development or ancillary works relating to those works, Breesea;</p> <p>(c) for the purposes of constructing, maintaining and operating the shared works and any associated development or ancillary works relating to those works, Optimus Wind and Breesea; and any restrictions, liabilities and obligations arising in relation to any shared works apply to the undertaker exercising the powers under this Order in relation to the shared works; and</p> <p>(d) in any other case, Optimus Wind and Breesea;</p>
<p>Development consent etc. granted by the Order</p>	<p>3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—</p> <p>(a) development consent for the authorised development; and</p> <p>(b) consent for the ancillary works, to be carried out within the Order limits.</p> <p>(2) Subject to the requirements and conditions in the deemed marine licences, Work Nos. 1 to 5A must be constructed anywhere within the Order limits seaward of MHWS and Work Nos. 5B to 69 must be constructed anywhere within the Order limits landward of MLWS.</p>	<p>Development consent etc. granted by the Order</p> <p>3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—</p> <p>(a) development consent for the authorised development; and</p> <p>(b) consent for the ancillary works, to be carried out within the Order limits.</p> <p>(2) Subject to the requirements and conditions in the deemed marine licences, Work Nos. 1 to 5A must be constructed anywhere within the Order limits seaward of MHWS and Work Nos. 5B to 69 must be constructed anywhere within the Order limits landward of MLWS.</p>	<p>Development consent, etc. granted by Order</p> <p>6.—(1) Subject to the provisions of this Order and the Requirements, Optimus Wind is granted—</p> <p>(a) development consent for the Project A works and any associated development relating to those works; and</p> <p>(b) consent for the ancillary works relating to those works, to be carried out within the Order limits.</p> <p>(2) Subject to the provisions of this Order and the Requirements, Breesea is granted—</p> <p>(a) development consent for the Project B works and any associated development relating to those works; and</p> <p>(b) consent for the ancillary works relating to those works, to be carried out within the Order limits.</p> <p>(3) Subject to the provisions of this Order and the Requirements, Optimus Wind and Breesea are granted—</p> <p>(a) development consent for the shared works and any associated development relating to those works; and</p> <p>(b) consent for the ancillary works relating to those works, to be carried out within the Order limits.</p> <p>(4) Each Work must be constructed and maintained within the limits of deviation for that Work.</p> <p>(5) In carrying out a Work, the undertaker may deviate from the situations shown on the works plans and described in Schedule 1 to the extent of the limits of deviation.</p> <p>(6) The grant of development consent is subject to paragraphs 2(2) and (3) and 3(2) to (8) of Part 1 of Schedule 1.</p>

<p>Article 4 - Power to construct and maintain the authorised project</p>	<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 made Dogger Bank Teesside A & B Order: '(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under Part 4 of the 2009 Act (marine licensing).' Can the applicant and the Marine Management Organisation (MMO) advise whether this absence has any adverse effect? 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>Power to construct and maintain authorised project</p> <p>4.—(a) The undertaker may at any time construct and maintain the authorised project, except to the extent that this Order or an agreement made under this Order provides otherwise.</p> <p>(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under Part 4 of the 2009 Act (marine licensing).</p>	<p>Maintenance of authorised project</p> <p>7.—(1) The undertaker may at any time maintain the authorised project, except to the extent that this Order or an agreement made under this Order provides otherwise.</p> <p>(2) No maintenance works, the likely effects of which on the environment must be assessed in accordance with the EIA Regulations and are not assessed in the environmental statement, may take place, unless otherwise approved by the MMO or the local planning authority.</p> <p>(3) Where the MMO or local planning authority's approval is required under paragraph (2), consent may be given only where it has been demonstrated to the satisfaction of the MMO or the local planning authority that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.</p>
<p>Article 7 - 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 provision used as the source for this article.</p>	<p>Defence to proceedings in respect of statutory nuisance</p> <p>7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(b) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—</p> <p>(a) the defendant shows that the nuisance—</p> <p>(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(c); or</p> <p>(ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or</p> <p>(b) the defendant shows that the nuisance—</p> <p>(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in compliance with requirement 26 (control of noise during operational phase); or</p> <p>(ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.</p> <p>(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised project.</p>	<p>Defence to proceedings in respect of statutory nuisance</p> <p>5.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(e) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance), no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—</p> <p>(a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site), of the Control of Pollution Act 1974(f);</p> <p>(b) is a consequence of the construction or maintenance of the authorised project and cannot reasonably be avoided; or</p> <p>(c) is a consequence of the use of the authorised project and cannot reasonably be avoided.</p> <p>(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.</p>

<p>Article 8 - Street Works</p>	<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>Street works</p> <p>8.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—</p> <p>(a) place apparatus under the street;</p> <p>(b) maintain apparatus under the street or change its position; and</p> <p>(c) execute any works required for or incidental to any works referred to in sub-paragraphs (a) and (b).</p> <p>(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.</p> <p>(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).</p> <p>(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.</p>	<p>Street works</p> <p>9.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets set out in Schedule 2 (streets subject to street works) as is within the Order limits and may—</p> <p>(a) break up or open the street or any sewer, drain or tunnel under it;</p> <p>(b) tunnel or bore under the street;</p> <p>(c) place apparatus in the street;</p> <p>(d) maintain apparatus in the street or change its position; and</p> <p>(e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).</p> <p>(2) In this article, “apparatus” has the same meaning as in Part 3 of the 1991 Act(a).</p>
<p>Article 9 - Temporary stopping up of public rights of way</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>Temporary stopping up of public rights of way</p> <p>9.—(1) The undertaker may, in connection with the carrying out of the authorised project, temporarily stop up each of the public rights of way specified in columns (2) of Schedule 3 (public rights of way to be temporarily stopped up) to the extent specified in column (3), by reference to the letters shown on the public rights of way to be temporarily stopped up plan.</p>	<p>Not included</p>
<p>Article 10 Temporary stopping up of 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>Temporary stopping up of streets</p> <p>10.—(1) Subject to paragraph (3), the undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street within the Order limits and may for any reasonable time—</p> <p>(a) divert the traffic or a class of traffic from the street; and</p> <p>(b) subject to paragraph (2), prevent all persons from passing along the street.</p> <p>(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.</p> <p>(3) The undertaker must not temporarily stop up, alter or divert any street without the consent of the street authority which may attach reasonable conditions to any consent.</p> <p>(4) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.</p> <p>(5) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (3) that street authority is deemed to have granted consent.</p>	<p>Temporary stopping up of streets</p> <p>11.—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—</p> <p>(a) divert the traffic from the street; and</p> <p>(b) subject to paragraph (3), prevent persons from passing along the street.</p> <p>(2) Without limiting paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article within the Order limits as a temporary working site.</p> <p>(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.</p> <p>(4) Without limiting paragraph (1), the undertaker may temporarily stop up, alter or divert the streets set out in column (2) of Schedule 3 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Schedule.</p> <p>(5) The undertaker must not temporarily stop up, alter, divert or use as a temporary working site—</p> <p>(a) any street referred to in paragraph (4) without first consulting the street authority; and</p> <p>(b) any other street without the consent of the street authority, which may attach reasonable conditions to the consent.</p> <p>(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).</p>
<p>Article 10 Temporary stopping up of streets</p>			<p>(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b), the street authority is deemed to have given consent.</p>

<p>Article 11 - Access to Works</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>Access to works</p> <p>11. The undertaker may, for the purposes of the authorised project— (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 4 (access to works); and (b) with the approval of the relevant planning authority after consultation with the highway authority in accordance with requirement 16 (highway access and improvements), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.</p> <p>(2) If the relevant planning authority fails to notify the undertaker of its decision within 28 days of receiving an application for approval under paragraph (1)(b) that relevant planning authority is deemed to have granted approval.</p>	<p>Access to works</p> <p>12.—(1) The undertaker may for the purposes of the authorised project— (a) form and lay out means of access, or improve existing means of access, in the locations set out in column (2) of Schedule 4 (access to works); and (b) with the approval of the local planning authority after consultation with the highway authority, form and lay out such other means of access, or improve existing means of access, at such locations within the Order limits, as the undertaker reasonably requires for the purposes of the authorised project.</p> <p>(2) If the local planning authority fails to notify the undertaker of its decision within 28 days of receiving an application for approval under paragraph (1)(b), the local planning authority is deemed to have given approval.</p>
<p>Article 12 - Agreements with street authorities</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>Agreements with street authorities</p> <p>12.—(1) A street authority and the undertaker may enter into agreements with respect to— (a) any temporary stopping up, alteration or diversion of a street authorised by this Order; or (b) the carrying out in the street of any of the works referred to in article 8(1) (street works).</p> <p>(2) Such an agreement may, without prejudice to the generality of paragraph (1)— (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and (c) contain such terms as to payment and otherwise as the parties consider appropriate.</p>	<p>Agreements with street authorities</p> <p>13.—(1) A street authority and the undertaker may enter into agreements with respect to— (a) the construction of any new street authorised by this Order; or (b) the carrying out in the street of any of the works referred to in article 9(1) (street works).</p> <p>(2) Such an agreement may, without limiting paragraph (1),— (a) provide for the street authority to carry out any function under this Order that relates to the street in question; (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and (c) contain such terms as to payment and otherwise as the parties consider appropriate.</p>
<p>Article 13 - Discharge of Water</p>	<p>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 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>Discharge of water</p> <p>13.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain subject to the obtaining of consent and approval respectively pursuant to sub-paragraphs (3) and (4) below.</p> <p>(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is determined as if it were a dispute under section 106 of the Water Industry Act 1991 (a) (right to communicate with public sewers).</p> <p>(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.</p> <p>(4) The undertaker must not carry out any works to any public sewer or drain pursuant to article 13(1) except— (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and (b) where that person has been given the opportunity to supervise the making of the opening.</p> <p>(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of, or construct any works under or over or within 8 metres of, any watercourse forming part of a main river without the prior written consent of the Environment Agency.</p> <p>(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.</p>	<p>Discharge of water</p> <p>15.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits and subject to receipt of consent under paragraph (3), make openings into, and connections with, the watercourse, public sewer or drain.</p> <p>(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (a) (right to communicate with public sewers).</p> <p>(3) The undertaker must not discharge any water into any watercourse, public sewer or drain without the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.</p> <p>(4) The undertaker must not make any opening into any public sewer or drain except— (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and (b) where that person has been given the opportunity to supervise the making of the opening.</p> <p>(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.</p> <p>(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.</p>

<p>Article 13 - Discharge of Water</p>		<p>(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(a).</p> <p>(8) In this article—</p> <p>(a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and</p> <p>(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991, as amended by the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in that Act.</p> <p>(9) 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 under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.</p>	<p>(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010.</p> <p>(8) If a person fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a), the person is deemed to have granted consent or given approval, as the case may be.(9) In this article—</p> <p>(a) “public sewer or drain” means a sewer or drain that belongs to the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(a) (interpretation), an internal drainage board, a local authority or a sewerage undertaker(b); and</p> <p>(b) other expressions, excluding “watercourse”, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.</p>
<p>Article 14 - 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>Authority to survey and investigate the land onshore</p> <p>14.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project and—</p> <p>(a) survey or investigate the land;</p> <p>(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;</p> <p>(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and</p> <p>(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.</p> <p>(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.</p> <p>(3) Any person entering land under this article on behalf of the undertaker—</p> <p>(a) must, if so required on entering the land, produce written evidence of their authority to do so; and (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.</p> <p>(4) No trial holes may be made under this article—</p> <p>(a) in land forming a railway without the consent of Network Rail Infrastructure Limited; or</p> <p>(b) in land held by or in right of the Crown without the consent of the Crown.</p> <p>(5) No trial holes may be made under this article—</p> <p>(a) in land located within the highway boundary without the consent of the highway authority; or</p> <p>(b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld.</p> <p>(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.</p>	<p>Authority to survey and investigate land</p> <p>17.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits and—</p> <p>(a) survey or investigate the land;</p> <p>(b) without limiting sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;</p> <p>(c) without limiting sub-paragraph (a), carry out ecological or archaeological investigations on such land; and</p> <p>(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.</p> <p>(2) No land may be entered, or equipment placed or left on or removed from the land, under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.</p> <p>(3) Any person entering land under this article on behalf of the undertaker—</p> <p>(a) must, if so required, produce written evidence of the authority to do so; and</p> <p>(b) may take with him or her such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.</p> <p>(4) No trial holes may be made under this article—</p> <p>(a) in land located within the highway boundary without the consent of the highway authority; or</p> <p>(b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld.</p> <p>(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.</p>

<p>Article 14 - Authority to survey and investigate the land onshore</p>		<p>(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.</p> <p>(7) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—</p> <p>(a) under paragraph (5)(a) in the case of a highway authority; or</p> <p>(b) under paragraph (5)(b) in the case of a street authority; that authority is deemed to have granted consent.</p>	<p>(6) If a highway authority or a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent—</p> <p>(a) in the case of a highway authority, under paragraph (4)(a); or (b) in the case of a street authority, under paragraph (4)(b), the authority is deemed to have given consent.</p>
<p>Article 16 - Time limit for exercise of authority to acquire land compulsorily</p>	<p>Some made Orders provide for longer periods for equivalently scaled projects.</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>Time limit for exercise of authority to acquire land compulsorily 16.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—</p> <p>(a) no notice to treat may be served under Part 1 of the 1965 Act; and</p> <p>(b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 19 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).</p> <p>(2) The authority conferred by article 23 (temporary use of land for carrying out the authorised project) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.</p>	<p>Time limit for exercise of authority to acquire land compulsorily 20.—(1) After 15th August 2021—</p> <p>(a) no notice to treat may be served under Part 1 of the 1965 Act; and</p> <p>(b) no declaration may be executed under section 4 of the 1981 Act(a), as applied by article 22 (application of Compulsory Purchase (Vesting Declarations) Act 1981).</p> <p>(2) The authority conferred by article 26 ceases at the end of 15th August 2021, but nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered, and possession taken, on or before that date.</p>
<p>Article 19 - (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)</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>Application of the Compulsory Purchase (Vesting Declarations) Act 1981 19.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.</p> <p>(2) The 1981 Act, as so applied, has effect with the following modifications.</p> <p>(3) In section 3 (preliminary notices), for subsection (1) there is substituted—</p> <p>“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—</p> <p>(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and</p> <p>(b) published in a local newspaper circulating in the area in which the land is situated”.</p> <p>(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”. (5) In that section, for subsections (5) and (6) there is substituted—</p> <p>“(5) For the purposes of this section, a person has a relevant interest in land if—</p> <p>(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or</p> <p>(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.</p> <p>(6) In section 5 (earliest date for execution of declaration)—</p> <p>(a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and</p> <p>(b) subsection (2) is omitted.</p> <p>(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” is omitted.</p> <p>(8) References to the 1965 Act in the 1981 Act is construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.</p>	<p>Application of Compulsory Purchase (Vesting Declarations) Act 1981 22.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.</p> <p>(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.</p> <p>(3) In section 3 (preliminary notices), for subsection (1), substitute—</p> <p>“(1) Before making a declaration under section 4 with respect to any land that is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice that is—</p> <p>(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and</p> <p>(b) published in a local newspaper circulating in the area where the land is situated.”.</p> <p>(4) In that section, in subsection (2)—</p> <p>(a) for “(1)(b)”, substitute “(1)”; and</p> <p>(b) after “given”, insert “and published”.</p> <p>(5) In that section, for subsections (5) and (6), substitute—“(5) For the purposes of this section, a person has a relevant interest in land if—</p> <p>(a) the person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or</p> <p>(b) the person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds 1 month.”.</p> <p>(6) In section 5 (earliest date for execution of declaration)—</p> <p>(a) in subsection (1), after “publication”, insert “in a local newspaper circulating in the area in which the land is situated”; and</p> <p>(b) omit subsection (2).</p> <p>(7) In section 7 (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.</p> <p>(8) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 of the 2008 Act(a) (application of compulsory acquisition provisions) to the compulsory acquisition of land under this Order.</p>

<p>Article 20 - (Acquisition of subsoil only)</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.</p> <p>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>Acquisition of subsoil only</p> <p>20.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 15 (compulsory acquisition of land) or article 17 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.</p> <p>(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.</p> <p>(3) Paragraph (2) does not prevent article 21 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.</p>	<p>Acquisition of subsoil or airspace only</p> <p>23.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of, or the airspace over, the land referred to in article 18 as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.</p> <p>(2) Where under paragraph (1) the undertaker acquires any part of, or rights in, the subsoil of or the airspace over, land, the undertaker is not required to acquire an interest in any other part of the land.</p> <p>(3) Paragraph (2) does not prevent article 24 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.</p>
<p>Article 21 - (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.</p> <p>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>Acquisition of part of certain properties</p> <p>21.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—</p> <p>(a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and</p> <p>(b) a copy of this article is served on the owner with the notice to treat.</p> <p>(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).</p> <p>(3) If no such counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.</p> <p>(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.</p> <p>(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—</p> <p>(a) without material detriment to the remainder of the land subject to the counter-notice; or</p> <p>(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the owner is required to sell the land subject to the notice to treat.</p>	<p>Acquisition of part of certain properties</p> <p>24.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—</p> <p>(a) a notice to treat is served on a person (the “owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (the “land subject to the notice to treat”); and</p> <p>(b) a copy of this article is served on the owner with the notice to treat.</p> <p>(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat that states that the owner is willing and able to sell the whole (the “land subject to the counter-notice”).</p> <p>(3) If no such counter-notice is served within that period, the owner must sell the land subject to the notice to treat.</p> <p>(4) If such a counter-notice is served within that period, the question whether the owner must sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.</p> <p>(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—</p> <p>(a) without material detriment to the remainder of the land subject to the counter-notice; or</p> <p>(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the owner must sell the land subject to the notice to treat.</p>

<p>Article 21 (Acquisition of certain part of properties)</p>		<p>(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken— (a) without material detriment to the remainder of the land subject to the counter-notice; or (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the notice to treat is deemed to be a notice to treat for that part. (7) If on such a reference the tribunal determines that— (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but (b) the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order. (8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that— (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and (b) the material detriment is not confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.</p>	<p>(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken— (a) without material detriment to the remainder of the land subject to the counter-notice; or (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the notice to treat is deemed to be a notice to treat for that part. (7) If on such a reference the tribunal determines that— (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but (b) the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land that the undertaker is authorised to acquire compulsorily under this Order. (8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that— (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and (b) the material detriment is not confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land that the undertaker is authorised to acquire compulsorily under this Order.</p>
<p>Article 21 (Acquisition of certain part of properties)</p>		<p>(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal. (10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.</p>	<p>(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal. (10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.</p>

<p>Article 26 - (Recovery of costs of new connections)</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>Recovery of costs of new connections 26.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 25 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given. (2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 25 (statutory undertakers), any person who is— (a) the owner or occupier of premises the drains of which communicated with that sewer; or (b) the owner of a private sewer which communicated with that sewer, is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant. (3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies. (4) In this paragraph— “public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and “public utility undertaker” has the same meaning as in the 1980 Act.</p>	<p>Recovery of costs of new connections 29.—(1) Where any apparatus of a public utility undertaker or a public communications provider is removed under article 28 (statutory undertakers), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given. (2) Paragraph (1) does not apply in the case of the removal of a public sewer, but where such a sewer is removed under article 28, any person who is— (a) the owner or occupier of premises, the drains of which communicated with the sewer; or (b) the owner of a private sewer which communicated with the sewer, is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant. (3) In this article— “public communications provider” has the same meaning as in section 151(1) of the 2003 Act; “public utility undertaker” has the same meaning as in the 1980 Act(a).</p>
<p>Article 28 - (Deemed licences under the Marine and Coastal Access Act 2009)</p>	<p>The ExA understands the basis for the approach 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.</p>	<p>Deemed marine licences under the 2009 Act 28. Under Part 4 Chapter 1 of the 2009 Act (marine licensing), the undertaker is granted the deemed marine licences contained in Schedules 10 to 15 to carry out the works and make the deposits specified in Part 1 of the deemed marine licences, subject to the conditions set out in Part 2 of the deemed marine licences— (a) Generation Assets (Licence 1 – Phase 1) (set out in Schedule 10) (b) Generation Assets (Licence 2 – Phase 2) (set out in Schedule 11) (c) Transmission Assets (Licence 1 – Phase 1) (set out in Schedule 12) (d) Transmission Assets (Licence 2 – Phase 2) (set out in Schedule 13) (e) Interconnection (Licence 1 – Phase 1) (set out in Schedule 14) (f) Interconnection (Licence 2 – Phase 2) (set out in Schedule 15)</p>	<p>Deemed marine licences under Marine and Coastal Access Act 2009 36. The marine licences set out in Schedules 8 to 11 are deemed to have been issued under Part 4 of the 2009 Act (marine licensing) for the licensed activities set out in Part 1, and subject to the Conditions set out in Part 2, of each licence.</p>

<p>Article 28 - (Deemed licences under the Marine and Coastal Access Act 2009)</p>	<p>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>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 29 - (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. 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>Application of landlord and tenant law</p> <p>29.—(1) This article applies to— (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.</p> <p>(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants may prejudice the operation of any agreement to which this article applies.</p> <p>(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—</p> <p>(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;</p> <p>(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or</p> <p>(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease).</p>	<p>Not included.</p>
<p>Article 30 - (Operational land for the purposes of the 1990 Act)</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>Operational land for purposes of the 1990 Act</p> <p>30. Development consent granted by this Order is treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).</p>	<p>Operational land for purposes of 1990 Act</p> <p>32. Development consent granted by this Order must be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).</p>

<p>Article 32 - (Certification of plans etc)</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>32.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of— [Plan names not extracted] for certification that they are true copies of the documents referred to in this Order.</p> <p>(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.</p> <p>(3) Where a plan or document certified under paragraph (1)—</p> <p>(a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and</p> <p>(b) identifies that provision by a number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made</p> <p>the reference in the plan or document concerned is construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.</p>	<p>Certification of plans, etc.</p> <p>40.—(1) The undertaker must, as soon as practicable after this Order is made, submit to the Secretary of State copies of the documents listed in Schedule 13 (documents to be certified) for certification that they are true copies of the documents referred to in this Order.</p> <p>(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.</p>
<p>Article 33 - (Arbitration)</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>Arbitration</p> <p>33. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.</p>	<p>Arbitration</p> <p>41. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.</p>

Article	ExA Comment	East Anglia THREE Offshore Wind Farm Order (Version 2)	Triton Knoll (as made)
Definition - "commence"	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.	"commence" means, (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for pre-construction surveys and monitoring and, (b) in respect of any other works comprised in the authorised project, beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the words "commencement" and "commenced" are construed accordingly;	"commence" means begin to carry out— (a) the activities authorised by the deemed marine licence other than pre-construction surveys and monitoring; and (b) in respect of any other works comprised in the authorised project, except as provided otherwise in this Order, any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of— (i) site clearance; (ii) pre-construction archaeological investigations; (iii) environmental surveys; (iv) removal of hedgerows; (v) investigations for the purpose of assessing ground conditions; (vi) diversion and laying of services; (vii) erection of any temporary means of enclosure related to pre-construction archaeological investigations and environmental surveys; (viii) the temporary display of site notices or advertisements; and "commencement" must be construed accordingly;
Definition - "maintain"	"maintain"... 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: "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...' Is there any reason why an equivalently limited and simple provision could not be used here?	"maintain" includes inspect, repair, adjust, alter, remove, reconstruct and replace, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (ancillary works) and any component part of any wind turbine generator, offshore electrical station, accommodation platform or meteorological mast described in Part 1 of Schedule 1 (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and "maintenance" is construed accordingly;	"maintain" includes— (a) inspect, upkeep, repair, adjust and alter; and (b) in relation to any of the ancillary works, remove, reconstruct and replace, to the extent assessed in the environmental statement; and "maintenance" must be construed accordingly;
Definition "Statutory Undertaker"	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?	"statutory undertaker" means any person falling within section 127(8) of the 2008 Act and a public communications provider as defined in section 15(1) of the Communications Act 2003;	"statutory undertaker" means any person falling within section 127(8) of the 2008 Act;

<p>Definition - "undertaker"</p>	<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 (DBCB), 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. 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" means East Anglia THREE Limited;</p>	<p>"undertaker" means, subject to article 5(9) (transfer of benefit of Order), Triton Knoll Offshore Wind Farm Limited (company number 03696654);</p>
<p>Development consent etc. granted by the Order</p>	<p>3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—</p> <p>(a) development consent for the authorised development; and</p> <p>(b) consent for the ancillary works, to be carried out within the Order limits.</p> <p>(2) Subject to the requirements and conditions in the deemed marine licences, Work Nos. 1 to 5A must be constructed anywhere within the Order limits seaward of MHWS and Work Nos. 5B to 69 must be constructed anywhere within the Order limits landward of MLWS.</p>	<p>Development consent etc. granted by the Order</p> <p>3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—</p> <p>(a) development consent for the authorised development; and</p> <p>(b) consent for the ancillary works, to be carried out within the Order limits.</p> <p>(2) Subject to the requirements and conditions in the deemed marine licences, Work Nos. 1 to 5A must be constructed anywhere within the Order limits seaward of MHWS and Work Nos. 5B to 69 must be constructed anywhere within the Order limits landward of MLWS.</p>	<p>Development consent granted by Order</p> <p>3.—(1) Subject to the provisions of this Order and to the Requirements, the undertaker is granted—</p> <p>(a) development consent for the authorised development; and</p> <p>(b) consent for the ancillary works, to be carried out within the Order limits.</p> <p>(2) Each Work may be constructed and maintained only within the limits of deviation for that Work.</p> <p>(3) Schedule 1 (authorised project) has effect.</p>

<p>Article 4 - Power to construct and maintain the authorised project</p>	<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 made Dogger Bank Teesside A & B Order: '(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under Part 4 of the 2009 Act (marine licensing).' Can the applicant and the Marine Management Organisation (MMO) advise whether this absence has any adverse effect? 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>Power to construct and maintain authorised project</p> <p>4.—a) The undertaker may at any time construct and maintain the authorised project, except to the extent that this Order or an agreement made under this Order provides otherwise.</p> <p>(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under Part 4 of the 2009 Act (marine licensing).</p>	<p>Maintenance of authorised project</p> <p>4. The undertaker may at any time maintain the authorised project except to the extent that this Order or an agreement made under this Order provides otherwise.</p>
<p>Article 7 - 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 provision used as the source for this article.</p>	<p>Defence to proceedings in respect of statutory nuisance</p> <p>7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(b) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—</p> <p>(a) the defendant shows that the nuisance—</p> <p>(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(c); or</p> <p>(ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or</p> <p>(b) the defendant shows that the nuisance—</p> <p>(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in compliance with requirement 26 (control of noise during operational phase); or</p> <p>(ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.</p> <p>(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised project.</p>	<p>Defence to proceedings in respect of statutory nuisance</p> <p>7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(f) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance), no order may be made, and no fine imposed, under section 82(2) of that Act if the defendant shows that the nuisance—</p> <p>(a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site), of the Control of Pollution Act 1974(a);</p> <p>(b) is a consequence of the construction or maintenance of the authorised project and cannot reasonably be avoided; or</p> <p>(c) is a consequence of the use of the authorised project and cannot reasonably be avoided.</p> <p>(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised project.</p>

<p>Article 8 - Street Works</p>	<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>Street works</p> <p>8.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—</p> <p>(a) place apparatus under the street;</p> <p>(b) maintain apparatus under the street or change its position; and</p> <p>(c) execute any works required for or incidental to any works referred to in sub-paragraphs (a) and (b).</p> <p>(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.</p> <p>(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).</p> <p>(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.</p>	<p>Street works</p> <p>8.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—</p> <p>(a) break up or open the street, or any sewer, drain or tunnel under it;</p> <p>(b) tunnel or bore under the street;</p> <p>(c) place apparatus under the street;</p> <p>(d) maintain apparatus under the street or change its position; and</p> <p>(e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).</p> <p>(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.</p> <p>(3) Sections 54 to 106 of the 1991 Act(b) apply to any street works carried out under paragraph (1).</p> <p>(4) In this article, “apparatus” has the same meaning as in Part 3 of the 1991 Act(c) (street works in England and Wales).</p>
<p>Article 9 - Temporary stopping up of public rights of way</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>Temporary stopping up of public rights of way</p> <p>9.—(1) The undertaker may, in connection with the carrying out of the authorised project, temporarily stop up each of the public rights of way specified in columns (2) of Schedule 3 (public rights of way to be temporarily stopped up) to the extent specified in column (3), by reference to the letters shown on the public rights of way to be temporarily stopped up plan.</p>	<p>Included in 9(3)b below</p>
<p>Article 10 Temporary stopping up of 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>Temporary stopping up of streets</p> <p>10.—(1) Subject to paragraph (3), the undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street within the Order limits and may for any reasonable time—</p> <p>(a) divert the traffic or a class of traffic from the street; and</p> <p>(b) subject to paragraph (2), prevent all persons from passing along the street.</p> <p>(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.</p> <p>(3) The undertaker must not temporarily stop up, alter or divert any street without the consent of the street authority which may attach reasonable conditions to any consent.</p> <p>(4) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.</p> <p>(5) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (3) that street authority is deemed to have granted consent.</p>	<p>Temporary stopping up of streets</p> <p>9.—(1) Subject to paragraph (4), the undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street within the Order limits and may for any reasonable time—</p> <p>(a) divert the traffic or a class of traffic from the street; and</p> <p>(b) subject to paragraph (2), prevent persons from passing along the street.</p> <p>(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.</p> <p>(3) Without limiting paragraph (1), the undertaker may—</p> <p>(a) temporarily stop up, alter or divert the streets specified in column (2) of Schedule 3 (streets to be temporarily stopped up); and</p> <p>(b) temporarily stop up, alter or divert—</p> <p>(i) any footpath specified in column (2) of Schedule 3 to the extent of the diversion zone for that footpath shown on the public rights of way plans;</p> <p>(ii) any diverted footpath to the extent of the diversion zone agreed with the highway authority.</p> <p>(4) The undertaker must not temporarily stop up, alter or divert—</p> <p>(a) any street referred to in paragraph (3) without notifying the relevant planning authority and the highway authority;</p> <p>(b) any other street without the consent of the highway authority, which may attach reasonable conditions to any consent (such consent not to be unreasonably withheld or delayed).</p> <p>(5) Except as agreed in advance by the relevant planning authority, any notification under paragraph (4)(a) must be made at least 14 days before the temporary stopping up, alteration or diversion takes place.</p> <p>(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).</p>

<p>Article 10 Temporary stopping up of streets</p>			<p>(7) In this article, "diverted footpath" means a footpath identified in column (2) of Schedule 3 that has been diverted by the highway authority before commencement of the onshore works.</p>
<p>Article 11 - Access to Works</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>Access to works 11. The undertaker may, for the purposes of the authorised project— (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 4 (access to works); and (b) with the approval of the relevant planning authority after consultation with the highway authority in accordance with requirement 16 (highway access and improvements), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project. (2) If the relevant planning authority fails to notify the undertaker of its decision within 28 days of receiving an application for approval under paragraph (1)(b) that relevant planning authority is deemed to have granted approval.</p>	<p>Access to works and temporary highways alterations 10. The undertaker may, for the purposes of the authorised project,— (a) form and lay out a means of access, or improve an existing means of access, in the locations specified in column (2) of Schedule 4 (access to works); (b) after consultation with the highway authority and with the approval of the relevant planning authority, form and lay out such other means of access, or improve an existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project; and (c) after consultation with the highway authority and with the approval of the relevant planning authority, carry out the temporary highways alterations.</p>
<p>Article 12 - Agreements with street authorities</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>Agreements with street authorities 12.—(1) A street authority and the undertaker may enter into agreements with respect to— (a) any temporary stopping up, alteration or diversion of a street authorised by this Order; or (b) the carrying out in the street of any of the works referred to in article 8(1) (street works). (2) Such an agreement may, without prejudice to the generality of paragraph (1)— (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and (c) contain such terms as to payment and otherwise as the parties consider appropriate.</p>	<p>Agreements with a highway authority 11.—(1) A highway authority and the undertaker may enter into agreements with respect to— (a) any temporary stopping up, alteration or diversion of a street authorised by this Order; or (b) the carrying out in the street of any of the works referred to in article 8(1) (street works). (2) An agreement referred to in paragraph (1) may, without limiting that paragraph,— (a) provide for the highway authority to carry out any function under this Order which relates to the street in question; (b) include an agreement between the undertaker and highway authority specifying a reasonable time for the completion of the works; and (c) contain such terms as to payment and otherwise as the parties consider appropriate.</p>

<p>Article 13 - Discharge of Water</p>	<p>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 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>Discharge of water</p> <p>13.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain subject to the obtaining of consent and approval respectively pursuant to sub-paragraphs (3) and (4) below.</p> <p>(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).</p> <p>(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.</p> <p>(4) The undertaker must not carry out any works to any public sewer or drain pursuant to article 13(1) except— (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and (b) where that person has been given the opportunity to supervise the making of the opening.</p> <p>(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of, or construct any works under or over or within 8 metres of, any watercourse forming part of a main river without the prior written consent of the Environment Agency.</p> <p>(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.</p>	<p>Discharge of water</p> <p>12.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain, subject to the obtaining of consent and approval under paragraphs (3) and (4) respectively.</p> <p>(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).</p> <p>(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as the person may reasonably impose, but must not be unreasonably withheld.</p> <p>(4) The undertaker must not carry out any works to any public sewer or drain under paragraph (1) except— (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and (b) where that person has been given the opportunity to supervise the making of the opening.</p> <p>(5) The undertaker must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.</p> <p>(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.</p>
<p>Article 13 - Discharge of Water</p>		<p>(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(a).</p> <p>(8) In this article—</p> <p>(a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and</p> <p>(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991, as amended by the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in that Act.</p> <p>(9) 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 under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.</p>	<p>(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010.</p> <p>(8) If a person who receives an application for consent under paragraph (3) or for approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving the application, the person is deemed to have granted consent or given approval, as the case may be.</p> <p>(9) In this article—</p> <p>(a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker(b), the Environment Agency, an internal drainage board or a local authority; and</p> <p>(b) except as provided in article 2 (interpretation), other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.</p>

<p>Article 14 - 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>Authority to survey and investigate the land onshore</p> <p>14.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project and—</p> <p>(a) survey or investigate the land;</p> <p>(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;</p> <p>(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and</p> <p>(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.</p> <p>(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.</p> <p>(3) Any person entering land under this article on behalf of the undertaker—</p> <p>(a) must, if so required on entering the land, produce written evidence of their authority to do so; and (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.</p> <p>(4) No trial holes may be made under this article—</p> <p>(a) in land forming a railway without the consent of Network Rail Infrastructure Limited; or</p> <p>(b) in land held by or in right of the Crown without the consent of the Crown.</p>	<p>Authority to survey and investigate land</p> <p>13.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project and—</p> <p>(a) survey or investigate the land;</p> <p>(b) without limiting sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;</p> <p>(c) without limiting sub-paragraph (a), carry out ecological or archaeological investigations on the land; and</p> <p>(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.</p> <p>(2) Paragraph (1) does not authorise the undertaker to carry out any of the actions listed in sub-paragraphs (a) to (d) on any land seaward of MHWS.</p> <p>(3) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.</p> <p>(4) Any person entering land under this article on behalf of the undertaker—</p> <p>(a) must, if so required on entering the land, produce written evidence of the authority to do so; and</p> <p>(b) may take with him or her such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.</p>
<p>Article 14 - Authority to survey and investigate the land onshore</p>		<p>(5) No trial holes may be made under this article—</p> <p>(a) in land located within the highway boundary without the consent of the highway authority; or</p> <p>(b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld.</p> <p>(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.</p> <p>(7) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—</p> <p>(a) under paragraph (5)(a) in the case of a highway authority; or</p> <p>(b) under paragraph (5)(b) in the case of a street authority; that authority is deemed to have granted consent.</p>	<p>(5) No trial holes may be made under this article—</p> <p>(a) in land located within the highway boundary without the consent of the highway authority; or</p> <p>(b) in a private street without the consent of the street authority</p> <p>(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.</p> <p>(7) If either a highway authority or street authority which receives an application for consent—</p> <p>(a) under paragraph (5)(a), in the case of a highway authority; or</p> <p>(b) under paragraph (5)(b), in the case of a street authority, fails to notify the undertaker of its decision within 28 days of receiving the consent, the authority is deemed to have given consent.</p>
<p>Article 16 - Time limit for exercise of authority to acquire land compulsorily</p>	<p>Some made Orders provide for longer periods for equivalently scaled projects.</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>Time limit for exercise of authority to acquire land compulsorily</p> <p>16.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—</p> <p>(a) no notice to treat may be served under Part 1 of the 1965 Act; and</p> <p>(b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 19 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).</p> <p>(2) The authority conferred by article 23 (temporary use of land for carrying out the authorised project) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.</p>	<p>Time limit for exercise of authority to acquire land compulsorily</p> <p>17.—(1) After 4th September 2021—</p> <p>(a) no notice to treat may be served under Part 1 of the 1965 Act; and</p> <p>(b) no declaration may be executed under section 4 of the 1981 Act(b) as applied by article 20 (application of Compulsory Purchase (Vesting Declarations) Act 1981).</p> <p>(2) The authority conferred by article 24 ceases at the end of 4th September 2021, except that nothing in this paragraph prevents the undertaker remaining in possession of land after that date, if the land was entered, and possession taken, on or before 4th September 2021.</p>

<p>Article 19 - (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)</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>Application of the Compulsory Purchase (Vesting Declarations) Act 1981 19.—(1) The 1981 Act applies as if this Order were a compulsory purchase order. (2) The 1981 Act, as so applied, has effect with the following modifications. (3) In section 3 (preliminary notices), for subsection (1) there is substituted— “(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is— (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and (b) published in a local newspaper circulating in the area in which the land is situated”. (4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”. (5) In that section, for subsections (5) and (6) there is substituted— “(5) For the purposes of this section, a person has a relevant interest in land if— (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”. (6) In section 5 (earliest date for execution of declaration)— (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and (b) subsection (2) is omitted. (7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” is omitted. (8) References to the 1965 Act in the 1981 Act is construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.</p>	<p>Application of Compulsory Purchase (Vesting Declarations) Act 1981 20.—(1) The 1981 Act applies as if this Order were a compulsory purchase order and as if the undertaker were a public authority under section 1(2) of that Act. (2) The 1981 Act, as so applied, has effect with the following modifications. (3) In section 3 (preliminary notices), for subsection (1) substitute— “(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is— (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and (b) published in a local newspaper circulating in the area where the land is situated.”. (4) In that section, in subsection (2)— (a) for “(1)(b)” substitute “(1)”; and (b) after “given” insert “and published”. (5) In that section, for subsections (5) and (6) substitute— “(5) For the purpose of this section, a person has a relevant interest in land if— (a) the person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in the reversion; or (b) the person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds 1 month.” (6) In section 5 (earliest date for execution of declaration)— (a) in subsection (1), after “publication” insert “in a local newspaper circulating in the area in which the land is situated”; and (b) omit subsection (2). (7) In section 7 (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.</p>
<p>Article 19 - (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)</p>			<p>(8) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 of the 2008 Act(a) to the compulsory acquisition of land under this Order.</p>
<p>Article 20 - (Acquisition of subsoil only)</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>Acquisition of subsoil only 20.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 15 (compulsory acquisition of land) or article 17 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land. (2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land. (3) Paragraph (2) does not prevent article 21 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.</p>	<p>Acquisition of subsoil only 21.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in article 15(1) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land. (2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land. (3) Paragraph (2) does not prevent article 23 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.</p>

<p>Article 21 - (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>Acquisition of part of certain properties</p> <p>21.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—</p> <p>(a) a notice to treat is served on a person ("the owner") under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden ("the land subject to the notice to treat"); and</p> <p>(b) a copy of this article is served on the owner with the notice to treat.</p> <p>(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole ("the land subject to the counter-notice").</p> <p>(3) If no such counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.</p> <p>(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.</p> <p>(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—</p> <p>(a) without material detriment to the remainder of the land subject to the counter-notice; or</p> <p>(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the owner is required to sell the land subject to the notice to treat.</p>	<p>Acquisition of part of certain properties</p> <p>23.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—</p> <p>(a) a notice to treat is served on a person (the "owner") under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (the "land subject to the notice to treat"); and</p> <p>(b) a copy of this article is served on the owner with the notice to treat.</p> <p>(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (the "land subject to the counter-notice").</p> <p>(3) If no counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.</p> <p>(4) If a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the Tribunal.</p> <p>(5) If on a reference the Tribunal determines that the land subject to the notice to treat can be taken—</p> <p>(a) without material detriment to the remainder of the land subject to the counter-notice; or</p> <p>(b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the owner is required to sell the land subject to the notice to treat.</p>
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<p>Article 21 (Acquisition of certain part of properties)</p>		<p>(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken— (a) without material detriment to the remainder of the land subject to the counter-notice; or (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the notice to treat is deemed to be a notice to treat for that part. (7) If on such a reference the tribunal determines that— (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but (b) the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order. (8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that— (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and (b) the material detriment is not confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.</p>	<p>(6) If on a reference the Tribunal determines that only part of the land subject to the notice to treat can be taken— (a) without material detriment to the remainder of the land subject to the counter-notice; or (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the notice to treat is deemed to be a notice to treat for that part. (7) If on a reference the Tribunal determines that— (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but (b) the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order. (8) If— (a) the undertaker agrees to take the land subject to the counter-notice; or (b) the Tribunal determines that— (i) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and (ii) the material detriment is not confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.</p>
<p>Article 21 (Acquisition of certain part of properties)</p>		<p>(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal. (10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.</p>	<p>(9) Where, by reason of a determination by the Tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, if it does so, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the Tribunal. (10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.</p>

<p>Article 26 - (Recovery of costs of new connections)</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>Recovery of costs of new connections 26.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 25 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given. (2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 25 (statutory undertakers), any person who is— (a) the owner or occupier of premises the drains of which communicated with that sewer; or (b) the owner of a private sewer which communicated with that sewer, is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant. (3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies. (4) In this paragraph— “public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and “public utility undertaker” has the same meaning as in the 1980 Act.</p>	<p>Recovery of costs of new connections 29.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 27, any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given. (2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 27, any person who is— (a) the owner or occupier of premises the drains of which communicated with the sewer; or (b) the owner of a private sewer which communicated with the sewer, is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by the person, in consequence of the removal, for the purpose of making the drain or sewer belonging to the person communicate with any other public sewer or with a private sewerage disposal plant. (3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies. (4) In this article— “public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); “public utility undertaker” has the same meaning as in the 1980 Act(a).</p>
<p>Article 28 - (Deemed licences under the Marine and Coastal Access Act 2009)</p>	<p>The ExA understands the basis for the approach 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.</p>	<p>Deemed marine licences under the 2009 Act 28. Under Part 4 Chapter 1 of the 2009 Act (marine licensing), the undertaker is granted the deemed marine licences contained in Schedules 10 to 15 to carry out the works and make the deposits specified in Part 1 of the deemed marine licences, subject to the conditions set out in Part 2 of the deemed marine licences— (a) Generation Assets (Licence 1 – Phase 1) (set out in Schedule 10) (b) Generation Assets (Licence 2 – Phase 2) (set out in Schedule 11) (c) Transmission Assets (Licence 1 – Phase 1) (set out in Schedule 12) (d) Transmission Assets (Licence 2 – Phase 2) (set out in Schedule 13) (e) Interconnection (Licence 1 – Phase 1) (set out in Schedule 14) (f) Interconnection (Licence 2 – Phase 2) (set out in Schedule 15)</p>	<p>Deemed marine licence under Marine and Coastal Access Act 2009 31. The marine licence set out in Schedule 9 is deemed to have been issued under Part 4 of the 2009 Act for the licensed marine activities specified in Part 1 of the licence and subject to the conditions specified in Part 2 of the licence.</p>

<p>Article 28 - (Deemed licences under the Marine and Coastal Access Act 2009)</p>	<p>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>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>Deemed marine licences under the 2009 Act</p> <p>28. Under Part 4 Chapter 1 of the 2009 Act (marine licensing), the undertaker is granted the deemed marine licences contained in Schedules 10 to 15 to carry out the works and make the deposits specified in Part 1 of the deemed marine licences, subject to the conditions set out in Part 2 of the deemed marine licences—</p> <p>(a) Generation Assets (Licence 1 – Phase 1) (set out in Schedule 10) (b) Generation Assets (Licence 2 – Phase 2) (set out in Schedule 11) (c) Transmission Assets (Licence 1 – Phase 1) (set out in Schedule 12) (d) Transmission Assets (Licence 2 – Phase 2) (set out in Schedule 13) (e) Interconnection (Licence 1 – Phase 1) (set out in Schedule 14) (f) Interconnection (Licence 2 – Phase 2) (set out in Schedule 15)</p>	<p>Deemed marine licence under Marine and Coastal Access Act 2009</p> <p>31. The marine licence set out in Schedule 9 is deemed to have been issued under Part 4 of the 2009 Act for the licensed marine activities specified in Part 1 of the licence and subject to the conditions specified in Part 2 of the licence.</p>
<p>Article 29 - (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. 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>Application of landlord and tenant law</p> <p>29.—(1) This article applies to— (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.</p> <p>(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants may prejudice the operation of any agreement to which this article applies.</p> <p>(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—</p> <p>(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;</p> <p>(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or</p> <p>(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease).</p>	<p>Application of landlord and tenant law</p> <p>32.—(1) This article applies to—</p> <p>(a) any agreement for leasing to a person the whole or any part of the authorised project or the right to operate it; and</p> <p>(b) any agreement entered into by the undertaker with a person for the construction, maintenance, use or operation of the authorised project, or any part of it, so far as the agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for the person's use.</p> <p>(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of an agreement to which this article applies.</p> <p>(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under such an agreement so as to—</p> <p>(a) exclude or in any respect modify any of the rights and obligations of the parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;</p> <p>(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any right or obligation provided for by the terms of the lease; or</p> <p>(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.</p>
<p>Article 30 - (Operational land for the purposes of the 1990 Act)</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>Operational land for purposes of the 1990 Act</p> <p>30. Development consent granted by this Order is treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).</p>	<p>Operational land for purposes of Town and Country Planning Act 1990</p> <p>33. Development consent granted by this Order must be treated as specific planning permission for the purposes of section 264(3) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).</p>

<p>Article 32 - (Certification of plans etc)</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>32.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of— [Plan names not extracted] for certification that they are true copies of the documents referred to in this Order. (2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy. (3) Where a plan or document certified under paragraph (1)— (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and (b) identifies that provision by a number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made the reference in the plan or document concerned is construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.</p>	<p>Certification of plans, etc. 35.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of— (a) the works plans (rev. C); (b) the Order limits plans (rev. C); (c) the land plans (rev. C); (d) the book of reference (rev. D, dated 8th August 2016); (e) the environmental statement (rev. A); (f) the access to works and streets plans (rev. C); (g) the hedgerow plans (rev. C); (h) the public rights of way plans (rev. C); (i) the crossings schedule (rev. 4.0); (j) the design principles document (rev. A); (k) the outline code of construction practice (onshore) (rev. C) comprising— (i) the outline construction method statement (rev. E); (ii) the outline health and safety plan; (iii) the outline noise and vibration management plan (rev. B); (iv) the outline air quality management plan; (v) the outline soil management plan (rev. E);</p>
<p>Article 32 - (Certification of plans etc)</p>			<p>(vi) the outline artificial light emissions plan; (vii) the outline site waste management plan; (viii) the outline pollution prevention and emergency incident response plan (rev. C); (ix) the outline construction environment management plan (rev. B); (x) the outline communications plan (rev. B); (l) the outline landscape strategy and ecological management plan (rev. D); (m) the outline traffic management plan (rev. B); (n) the outline onshore written scheme of investigation (rev. B); (o) the outline offshore written scheme of investigation (rev. A); (p) the outline access management plan (rev. B); (q) the outline offshore operations and maintenance plan (rev. A), for certification that they are true copies of the documents referred to in this Order. (2) A plan or document so certified is admissible in proceedings as evidence of the contents of the document of which it is a copy.</p>
<p>Article 33 - (Arbitration)</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>Arbitration 33. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.</p>	<p>Arbitration 36. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.</p>