



# East Anglia TWO Offshore Windfarm

## Explanatory Memorandum

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## THE PLANNING ACT 2008

### THE INFRASTRUCTURE PLANNING (APPLICATIONS: PRESCRIBED FORMS AND PROCEDURE) REGULATIONS 2009

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#### THE PROPOSED EAST ANGLIA TWO OFFSHORE WIND FARM ORDER

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#### EXPLANATORY MEMORANDUM

### 1. Introduction

- 1.1 This explanatory memorandum accompanies an application for development consent (the **Application**) by East Anglia TWO Limited (the **Applicant**) to construct and operate the East Anglia TWO Offshore Wind Farm (**East Anglia TWO**). The explanatory memorandum explains the purpose and effect of each article of, and Schedule to, the draft East Anglia TWO Offshore Wind Farm Order (the **Order**), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
- 1.2 Notwithstanding its repeal, the wording used in the draft Order has been derived from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the **Model Provisions**). In some cases, the draft Order draws from the drafting used in Orders for similar developments made under the Planning Act 2008 (the **2008 Act**), the Transport and Works Act 1992 and other Acts authorising development.
- 1.3 Since the Order seeks to apply and modify statutory provisions under section 120(5) of the 2008 Act concerning the compulsory acquisition of land, it has been drafted as a statutory instrument as required under section 117(4) of the 2008 Act.

### 2. Purpose of the Order

- 2.1 The purpose of the Order is to grant the Applicant development consent for two linked nationally significant infrastructure projects (**NSIPs**), namely an offshore generating station and overhead line realignment works, together with associated development.
- 2.2 The offshore generating station NSIP will be located in the North Sea approximately 37.3km from the port of Lowestoft and 32.6km from Southwold comprising up to 75 wind turbine generators, up to one meteorological mast and a network of subsea inter-array cables.
- 2.3 The Order also authorises associated development linked to the offshore generating station NSIP, which includes:
  - up to one offshore construction, operation and maintenance platform;
  - up to four offshore electrical platforms;
  - a network of subsea platform link cables;
  - up to two subsea export cables;
  - landfall connection works north of Thorpeness in Suffolk;

- onshore cables from the landfall to the onshore substation;
  - an onshore substation in Grove Wood, Friston;
  - accesses, ecological mitigation, landscaping; and
  - other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project.
- 2.4 The overhead line realignment works will be located in Grove Wood, Friston and will include:
- permanent realignment of a short section of the northern and southern overhead line circuits including the reconstruction and/or relocation of up to two pylons and construction of up to one additional pylon in order to realign the northern overhead lines and the reconstruction and/or relocation of up to one pylon in order to realign the southern overhead lines;
  - temporary diversion of the northern and southern overhead line circuits; and
  - construction of up to three permanent cable sealing end compounds (one of which may include circuit breakers) and underground connections.
- 2.5 The Order also authorises associated development linked to the overhead line realignment works NSIP, including:
- a new national grid substation;
  - accesses; and
  - other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project.
- 2.6 The Order also authorises ancillary works within the Order limits.
- 2.7 The Order contains two deemed marine licences under section 66(1) of the Marine and Coastal Access Act 2009 (the 2009 Act); one for the generation assets (licence 1) and one for the offshore transmission assets (licence 2). In addition, the Order contains powers to acquire land, or rights, compulsorily for the construction and operation of the project.

#### **Nationally Significant Infrastructure Project – offshore generating station**

- 2.8 Pursuant to sections 14(1)(a) and 15(3) of the 2008 Act, an offshore generating station in England or Wales having a capacity of more than 100 MW is an NSIP.
- 2.9 Section 31 of the 2008 Act provides that development consent is required under the Act for development that is or forms part of a NSIP. As the proposed generating station is proposed to have a capacity of more than 100 MW it qualifies as a NSIP.
- 2.10 The detailed elements which comprise the generating station, and its associated development, are considered separately below.

## **Nationally Significant Infrastructure Project – overhead line realignment works**

- 2.11 Pursuant to sections 14(1)(b) and 16 of the 2008 Act, the installation of an electric line above ground in England is an NSIP unless it falls within certain exclusions.
- 2.12 The exemptions include:
- if the nominal voltage of the line is expected to be less than 132 kilovolts,
  - if the length of the line (when installed) will be less than two kilometres,
  - if—
    - the line will replace an existing line,
    - the nominal voltage of the line is expected to be greater than the nominal voltage of the existing line,
    - the height above the surface of the ground of any support for the line will not exceed the height of the highest existing support or support which is being replaced by more than 10 per cent, and
    - where the line is to be installed in a different position from the existing line, the distance between any new support and the existing line will not exceed 60 metres and the existing line will be removed within twelve months from the date on which the installation of the line which replaces it is complete,
  - to the extent that (when installed) the line will be within premises in the occupation or control of the person responsible for its installation, or
  - if section 37(1) of the Electricity Act 1989 (consent required for overhead lines) does not apply to it by virtue of the Overhead Lines (Exemption) (England and Wales) Regulations 2009 (“the Exemption Regulations”).
- 2.13 In order to connect the offshore generating station to the national grid transmission system, a new national grid substation is required which will need to connect into the existing National Grid 400kV overhead lines. The overhead line realignment works are necessary to facilitate this connection.
- 2.14 It is not anticipated that any of the exemptions referred to above will apply to the overhead line realignment works as the lines will exceed 132 kV, the length of the permanent and temporary diversions of the overhead line circuits is expected to exceed 2km, the distance between new support and the existing line will exceed 60m, much of the works will be on third party land and none of the exemptions set out in the Exemption Regulations apply.
- 2.15 In light of this, the overhead line realignment works are considered to be an NSIP.
- 2.16 The detailed elements which comprise the overhead line realignment works, and its associated development, are considered separately below.

### **Associated Development**

- 2.17 Section 115 of the Planning Act 2008 provides that, in addition to the NSIP for which development consent is required, consent may also be granted for associated

development. Associated development is defined in the Planning Act as development which is associated with the NSIP or any part of it.

2.18 In determining what comprises associated development, the Secretary of State will have regard to the Department for Communities and Local Government ‘*Planning Act 2008: Guidance on associated development applications for major infrastructure projects*’, April 2013 (“Associated Development Guidance”).

2.19 The Associated Development Guidance provides that it is for the Secretary of State to decide on a case by case basis whether or not development should be treated as associated development. In making this decision, the Secretary of State will take into account the following core principles:

*“(i) The definition of associated development, as set out in paragraph 3 above, requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts;*

*(ii) Associated development should not be an aim in itself but should be subordinate to the principal development.*

*(iii) Development should not be treated as associated development if it is only necessary as a source of additional revenue for the applicant, in order to cross-subsidise the cost of the principal development. This does not mean that the applicant cannot cross-subsidise, but if part of a proposal is only necessary as a means of cross-subsidising the principal development then that part should not be treated as associated development.*

*(iv) Associated development should be proportionate to the nature and scale of the principal development. However, this core principle should not be read as excluding associated infrastructure development (such as a network connection) that is on a larger scale than is necessary to serve the principal development if that associated infrastructure provides capacity that is likely to be required for another proposed major infrastructure project. When deciding whether it is appropriate for infrastructure which is on a larger scale than is necessary to serve a project to be treated as associated development, each application will have to be assessed on its own merits. For example, the Secretary of State will have regard to all relevant matters including whether a future application is proposed to be made by the same or related developer as the current application, the degree of physical proximity of the proposed application to the current application, and the time period in which a future application is proposed to be submitted.”*

2.20 The Associated Development Guidance states that it is expected that associated development will, in most cases, be typical of development brought forward alongside the relevant type of principle development or of a kind that is usually necessary to support it. Examples provided include a grid connection for a commercial power station and specifically for offshore generating stations examples include onshore substations, harmonic filter compounds, overhead/underground lines, jointing pits,

sealing end compounds, sea/land cable interface buildings and structures, converter stations and associated storage, facilities for additional sub-sea cables to offshore platforms and additional circuit breakers or circuit breaker bays on offshore platforms.

- 2.21 The associated development for which the Order seeks authorisation includes up to four offshore electrical platforms, an offshore construction, operation and maintenance platform, a meteorological mast, offshore export cables, onshore cables and associated infrastructure such as transition bays and joint bays, and a new onshore substation at Grove Wood, Friston as well as works associated with the overhead line realignment works, including a new national grid substation.

### **3. Preliminary**

- 3.1 Articles 1 and 2 of the Order contain preliminary provisions

#### *Article 1 (Citation and commencement)*

- 3.2 This article provides for the commencement and citation of the Order. It includes the date on which the Order comes into force, which may or may not be the date on which the Order is made.

#### *Article 2 (Interpretation)*

- 3.3 This article provides for the interpretation of the Order. Amongst other things, the Article defines wind turbine generator, offshore electrical platform and construction, operation and maintenance platform as well as types of foundations and other structures such as the meteorological mast and the onshore substation. These definitions do not appear in the Model Provisions but relate to the specific project and are self-explanatory.
- 3.4 Definitions of documents submitted as part of the Application and which are referred to in the Order have been included.
- 3.5 A definition of “commence” has also been included in the Order. This definition excludes offshore preparation works such as surveys, monitoring and UXO clearance and onshore preparation works such as site clearance, pre-planting of landscaping works, archaeological investigations, environmental surveys, ecological mitigation, erection of temporary means of enclosure, creation of site accesses and highway alterations. The effect of this definition is that the onshore and offshore preparation works can be carried out prior to the majority of the requirements contained in Part 3 of Schedule 1 to the Order being discharged and in the case of the offshore works, prior to a number of the conditions contained in Part 2 of the deemed marine licences in Schedules 13 and 14 being discharged. It is acknowledged however that some of the onshore and offshore preparation works themselves may have environmental effects and so such preparation works have been made subject to appropriate requirements and conditions to ensure that the relevant planning authority or the MMO, as the case may be, can approve details in respect of such works before they are carried out (for example, requirement 19 requires details of intrusive pre-commencement archaeological surveys, archaeological investigations or site

preparation works in respect of such surveys or investigations to be provided in a pre-commencement archaeology execution plan which must be approved by the relevant planning authority before such pre-commencement works can be undertaken, requirement 21 requires the approval of an ecological management plan prior to onshore preparation works being undertaken and conditions 16 and 12 of the deemed marine licences in Schedules 13 and 14, respectively, require approval of various documents in respect of UXO clearance activities before such activities can be carried out). This approach to the definition of commence is critical to ensure that pre-commencement activities can be carried out in a timely manner prior to commencement of the works and do not hold up the construction of the project, whilst still being subject to appropriate controls and approvals.

- 3.6 A definition of "maintain" has been added to clarify what is authorised under article 4 (power to maintain authorised project). The definition is considered necessary to provide clarity as to the maintenance activities authorised by the Order and it follows the definition in the East Anglia THREE Offshore Wind Farm Order 2017.
- 3.7 The definition of Order limits follows the definition in the Model Provisions and cross refers to the limits shown on the works plan.
- 3.8 The "undertaker" is defined as East Anglia TWO Limited, which has the benefit of the provisions of the Order, subject to article 5 (benefit of the Order).

#### **4. Operative Provisions**

- 4.1 Articles 3 to 43 of the Order contain provisions for and relating to the authorised project, and miscellaneous and general provisions.

##### **Principle Powers**

Article 3 (*Development consent etc. granted by the Order*)

- 4.2 This article is based on Model Provision 2 (and the equivalent provision in the Triton Knoll Electrical System Order 2016) and grants development consent for the authorised development and consent for the ancillary works within the Order limits, thereby authorising the construction of the authorised project. The authorised development means the development described in Part 1 of Schedule 1. Part 2 of Schedule 1 describes the ancillary works. Together, these are defined as the authorised project.
- 4.3 The power to carry out the works is subject to the requirements attached to the Order as set out in Part 3 of Schedule 1.
- 4.4 Paragraph (2) provides for limits within which the undertaker can deviate in the construction of the works numbered in the Schedule.

Article 4 (*Power to maintain authorised project*)

- 4.5 This article is based on Model Provision 3 and makes provision for the undertaker to maintain the authorised project, subject to any contrary provisions in the Order or any agreement made under the Order.
- 4.6 Paragraph (2) makes it clear that the power to maintain does not remove the requirement to obtain further marine licences under Part 4 of the Marine and Coastal Access Act 2009 for offshore works which are not covered by the deemed marine licences within the Order.

Article 5 (*Benefit of the Order*)

- 4.7 This article, which largely follows the East Anglia ONE Offshore Wind Farm Order 2014 and the East Anglia THREE Order, provides for the transfer of the whole or part of the benefit of the Order with the consent of the Secretary of State, subject to certain exceptions. It also provides for the transfer of the deemed marine licences with the consent of the Secretary of State, subject to certain exceptions. The Secretary of State must however consult the MMO before giving consent to the transfer or grant of any of all of the benefit of the provisions of the deemed marine licences.
- 4.8 Paragraphs (3) and (7) provide that the undertaker does not need to obtain consent of the Secretary of State where the transferee or lessee is a holder of a licence under the Electricity Act 1989 or where the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed. Where consent is not required under these provisions, paragraph (9) requires written notification to be given to the Secretary of State and, where the transfer or grant relates to the exercise of powers in their area, to the MMO and the relevant planning authority, prior to a transfer or grant of any benefit.
- 4.9 Paragraph (8) limits the transfer or grant of the provisions of article 8 (street works), article 12 (temporary stopping up of streets), article 18 (compulsory acquisition of land), article 20 (compulsory acquisition of rights), article 26 (temporary use of land for carrying out the authorised project) and article 27 (temporary use of land for maintaining the authorised project) so that such provisions have effect only for the benefit of the named undertaker and a person who is a transferee or lessee and who also holds a licence under the Electricity Act 1989 or, in respect of article 8, is a street authority.

Article 6 (*Application and modification of legislative provisions*)

- 4.10 This article is derived from Model Provision 6. Paragraph (1) provides for the modification of Regulation 6(1) of the Hedgerows Regulations 1997 so that removal of any hedgerow to which the Regulations apply is permitted for carrying out development which has been authorised by a development consent order made pursuant to the 2008 Act. The Hedgerows Regulations allow a local planning authority to object to and prohibit interference with a hedgerow. The normal exception for development permitted by a planning permission does not apply to



development authorised by a development consent order and therefore this modification is necessary to extend the exception to development authorised by a development consent. This approach has precedent in the East Anglia ONE Order and the East Anglia THREE Order.

- 4.11 Paragraph (2) disapplies provisions of the Neighbourhood Planning Act 2017. This disapplication provides that the temporary possession provisions in that enactment would not take effect at the expense of the temporary possession provisions contained in the Order. The rationale for this is that the wording of the temporary possession provisions within the Order is well established and the relevant provisions relating to temporary possession within the Neighbourhood Planning Act 2017 are currently untested and regulations required to provide more detail on the operation of the regime have not yet been made. There is precedent for this approach in the recent Millbrook Gas Fired Generating Station Order 2019, the Silvertown Tunnel Order 2018 and the A19/A184 Testo's Junction Alteration Development Consent Order 2018.

*Article 7 (Defence to proceedings in respect of statutory nuisance)*

- 4.12 This article reflects Model Provision 7 and provides that no-one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of constructing or maintaining the authorised project and for which a notice under section 60 or consent obtained under section 61 of the Control Pollution Act 1974, if the noise results from the use of the authorised project whilst being used in compliance with requirement 26 (control of noise during operational phase) and requirement 27 (control of noise during operational phase cumulatively with East Anglia ONE North onshore substation) or if the noise cannot be reasonably avoided as a consequence of the authorised project. This approach has precedent in the East Anglia ONE Order and the East Anglia THREE Order.

**Streets**

*Article 8 (Street works)*

- 4.13 This article is based on Model Provision 8 and provides that the undertaker may enter any of the streets specified in Schedule 2 as is within the Order limits to undertake the activities listed. The right given by the article is a statutory right for the purposes of 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991.

*Article 9 (Application of the 1991 Act)*

- 4.14 This article provides that relevant provisions of the New Roads and Street Works Act 1991 which apply to the carrying out of street works within the meaning of that Act, are to apply to the temporary stopping up of a street, and to the carrying out of street works under article 8 even if no street works within the meaning of that Act are being carried out. This would, for example, require the undertaker to make arrangements, so

far as practicable, for utilities to gain access to their apparatus. This provision follows article 10 of the Hornsea Two Offshore Wind Farm Order 2016.

Article 10 (*Public rights of way*)

- 4.15 This article is based on Model Provision 10 and provides that the footpaths specified in Schedule 4 (footpaths to be stopped up) will be extinguished following certification by the local highway authority that the agreed alternative right of way has been created to the required standard.

Article 11 (*Temporary stopping up of public rights of way*)

- 4.16 This article is adapted from the Model Provisions and appears in the East Anglia ONE Order. It allows the temporary stopping up of the public rights of way specified in column (2) of Schedule 3 (public rights of way to be temporarily stopped up) during the construction of the authorised project provided that the diversion route described in column (4) of Schedule 3 is first provided to the required standard.

Article 12 (*Temporary stopping up of streets*)

- 4.17 This article is largely based on Model Provision 11 and provides for the temporary stopping up of streets, subject to the consent of the street authority concerned which may attach reasonable conditions to any such consent or, in the case of the temporary stoppages of those streets specified in Schedule 5 (streets to be temporarily stopped up), following consultation with the street authority.
- 4.18 Paragraph (2) departs from the Model Provision and provides that 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. Paragraph (7) extends Model Provision 11 and inserts a time limit of 28 days for the street authority to respond to an application for consent under this article, failure to do so within the time limit will result in consent being deemed to have been given. Paragraphs (2) and (7) are preceded in the Hornsea One Offshore Wind Farm Order 2014 and the Hornsea Two Order.

Article 13 (*Access to works*)

- 4.19 This article reflects Model Provision 12 and provides that the undertaker may form new or improve existing means of access in the locations specified in Schedule 6 (access to works) and for any other access, with the approval of the planning authority after consulting the highway authority. This article also extends Model Provision 12 stating that if the local planning authority fails to make a decision within 28 days of the undertaker's application, consent will be deemed to have been granted. This reflects wording included in the East Anglia THREE Order and the Hornsea Two Order.

Article 14 (*Agreements with street authorities*)

- 4.20 This article reflects Model Provision 13 and provides that street authorities and the undertaker may enter into agreements with respect to any temporary stopping up,

alteration or diversion of a street authorised by the Order, the construction of any new street authorised by the Order or the carrying out of works in the streets referred to in article 8 (*Street works*).

Article 15 (*Highway alterations*)

- 4.21 This article is not found in the Model Provisions but has precedent in the Hornsea One Order and the Hornsea Two Order. It provides that the undertaker may carry out highway alterations to specified plots marked on the land plan.
- 4.22 The improvements will be subject to highway authority approval, such approval not to be unreasonably withheld. As with earlier articles, a deemed approval mechanism is provided for.

**Supplemental Powers**

Article 16 (*Discharge of water*)

- 4.23 This article reflects Model Provision 14 and provides that the undertaker may use any watercourse or public sewer or drain, in connection with the construction and maintenance of the authorised project with the approval and superintendence (if provided) of the person to whom it belongs (such approval may be subject to reasonable terms and conditions, but shall not be unreasonably withheld). In a departure from the Model Provisions but in keeping with other articles and existing precedent, this article also makes provision for a 28 day time limit for a person to respond to an application for consent, failing which consent is deemed to have been given. This follows the approach taken in the East Anglia THREE Order and the Hornsea Two Order.
- 4.24 Paragraph (7) of the Model Provision has been updated to refer to the environmental permitting regime under the Environmental Permitting (England and Wales) Regulations 2016.

Article 17 (*Authority to survey and investigate the land onshore*)

- 4.25 This article reflects Model Provision 16 and confers on the undertaker a power to enter any land shown within the Order limits in order to survey or investigate the land. It adds to Model Provision 16 to make it clear that the undertaker may also place on, leave on and remove from the land apparatus and welfare facilities for use in connection with the survey and investigation of land and the making of trial holes and trenches.
- 4.26 Following the precedent in the East Anglia THREE Order and the Hornsea Two Order, the article also makes provision for a 28 day time limit for a highway authority or a street authority to respond to an application for consent, failing which that consent is deemed to have been given.

## **Powers of Acquisition**

### Article 18 (*Compulsory acquisition of land*)

- 4.27 This article provides that the undertaker may acquire compulsorily so much of the Order land as is required for the authorised project or to facilitate it, or is incidental to it.
- 4.28 The Model Provisions have not been followed in that paragraph (2) of Model Provision 18 has been revised. The model provisions at paragraph (2) provide for automatic extinguishment of rights applying to the Order land as soon as it is vested in the undertaker. This is inconsistent with both the Applicant's intentions and the provisions of Article 21 (*Private rights*) which is based on the model provisions applicable to railways orders. Article 21 (*Private rights*) provides for the extinguishment of rights upon entry onto the land concerned or upon the date of acquisition. Entry may take place ahead of vesting of the Order land pursuant to the powers of temporary possession in the Order, or by agreement. Article 21 (*Private rights*) also provides for rights to be excluded from extinguishment where extinguishment via statutory process is not appropriate or required. As a result, Article 21 (*Private rights*) has been expanded to deal with rights in general and the corresponding provision omitted from this draft article.
- 4.29 Whilst Article 18 provides broad powers, it is subject to paragraph (2) of article 20 (compulsory acquisition of rights) and article 26 (temporary use of land for carrying out the authorised project). In practice, pursuant to the other Articles, the powers are limited, and for the great majority of the East Anglia Two Order land, will be restricted to some combination of the acquisition of specified new rights (Article 20), and specified powers of temporary possession.

### Article 19 (*Time limit for exercise of authority to acquire land compulsorily*)

- 4.30 This article is based on Model Provision 20 and provides a time limit of seven years beginning on the day on which this Order is made to exercise the powers of compulsory acquisition of land. It departs from the Model Provisions in that the time limit has been extended from five to seven years. This extra time is required due to the scale and complexity of the project, uncertainty around the timing and outcome of future rounds for Contracts for Difference as well as unknown contractor and supply chain availability.

### Article 20 (*Compulsory acquisition of rights*)

- 4.31 Article 20 enables the undertaker to acquire rights over land, including new rights and existing rights if applicable.
- 4.32 The article is drafted so as to allow the undertaker flexibility to acquire new rights in the Order land if appropriate rather than outright acquisition under Article 18 (*Compulsory acquisition of land*). This flexibility allows the undertaker to reduce the areas required for freehold acquisition and rely on new, permanent rights instead if this is appropriate in the circumstances. This flexibility is appropriate to allow for

continued negotiations with owners of Order land and is a provision that is now usual in offshore wind orders. This was accepted in the East Anglia ONE and THREE Orders and in the Hornsea Two Order.

- 4.33 Article 20 also enables the undertaker to impose restrictive covenants as scheduled in Schedule 7 (land in which only new rights etc. may be acquired) to the Order for the protection of the cables, jointing bays and any ducts that will be installed as part of the authorised development. Such protection has been given in the East Anglia ONE and East Anglia THREE Orders and in the Hornsea Two Order. It is considered that the nature of the authorised development is appropriate for such restrictive covenants and the predominantly agricultural nature of the Order lands would not be unduly burdened by the imposition of restrictive covenants, particularly on the basis that where restrictive covenants are being sought, a right of access for maintenance purposes over the same area is also being sought.
- 4.34 Paragraph (2) departs from the Model Provisions in providing that, in the case of the Order land specified in Schedule 7 (land in which only new rights etc. may be acquired), the undertaker may exercise the powers of compulsory acquisition to acquire compulsorily such new rights or impose such restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of Schedule 7. In relation to such land outright acquisition is not required.
- 4.35 The undertaker's rights under paragraphs (1) and (2) are therefore limited to the acquisition of such new rights or restrictive covenants as are set out in Schedule 7.
- 4.36 Paragraph (3) provides that where the undertaker needs only to acquire a right over land, it shall not be obliged to acquire any greater interest in that land.
- 4.37 Paragraph (4) refers to modifications to enactments in relation to the creation of new rights and their compensation as a result of the creation of a new right. It is considered that such a modification to the statutory provisions relating to the acquisition of new rights is necessary because they do not operate clearly in relation to the creation of new rights over land. Accordingly a new schedule (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) has been incorporated, modelled on numerous development consent orders including the Millbrook Gas Fired Generating Station Order 2019, the Silvertown Tunnel Order 2018 and the East Anglia THREE Order as well as the provisions of the Local Government (Miscellaneous Provisions) Act 1976 which apply in relation to compulsory purchase orders made by local authorities.
- 4.38 Paragraphs (5) and (6) provide a mechanism for the transfer of rights to statutory undertakers with the consent of the Secretary of State in circumstances where Order land is required for the diversion or relocation of their apparatus.

#### Article 21 (*Private rights*)

- 4.39 Model Provision 22 is amended, as explained in relation to article 18 (*Compulsory acquisition of land*), so as to apply to private rights generally and not just to rights of way.

- 4.40 Article 21 provides that private rights over land subject to compulsory acquisition under articles 18 and 20 of the Order are not to have effect to the extent that the continuance of those rights are inconsistent with the exercise of the powers under articles 18 and 20.
- 4.41 Paragraph (2) envisages that some rights may be acquired voluntarily through the grant of a lease. A reference to section 152 of the Planning Act is inserted into paragraph (4) to make it clear that the compensation payable under this article is not a new right to compensation, but is the compensation payable for injurious affection which would normally arise under section 10 of the Compulsory Purchase Act 1965, but which, in relation to a development consent order (to which section 10 does not apply), arises instead under section 152 of the Planning Act.

*Article 22 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)*

- 4.42 This article provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981 and provides for that Act to have effect subject to certain modifications. It gives the undertaker the option to acquire land by this method rather than through the notice to treat procedure. This article is based on Model Provision 23 and has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016 recent amendments to the Compulsory Purchase (Vesting Declarations) Act 1981.

*Article 23 (Application of Part 1 of the Compulsory Purchase Act 1965)*

- 4.43 This article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (4) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 26 or 27 of this Order. Whilst this is not a Model Provision, these modifications have broad precedent in the High Speed Rail (London – West Midlands) Act 2017 and are reflected in the Wrexham Gas Fired Generating Station Order 2017.

*Article 24 (Acquisition of subsoil or airspace only)*

- 4.44 This article provides that the undertaker may acquire compulsorily the subsoil or airspace only of the land referred to in article 18 (compulsory acquisition of land) or article 20 (compulsory acquisition of rights) as may be required, instead of acquiring the whole of the land or an interest in the whole of the land.
- 4.45 This follows the Model Provisions and the Millbrook Gas Fired Generating Station Order in terms of subsoil but extends it to include the acquisition of airspace. There are precedents for this in, for example, the Glasgow Airport Rail Link Act 2007, the Network Rail (Ipswich Chord) Order 2012, the Hornsea One Order and the Hornsea Two Order.

Article 25 (*Rights under or over streets*)

- 4.46 This article, which follows Model Provision 27, empowers the undertaker to use the subsoil under or airspace above any street within Order limits without being required to acquire any part of the street or any easement or right in it.

Article 26 (*Temporary use of land for carrying out the authorised project*)

- 4.47 This article enables the undertaker in connection with the carrying out of the authorised project, to take temporary possession of land listed in column (2) of Schedule 9 (land of which temporary possession may be taken). Additionally to the Model Provisions, paragraph (1)(a)(ii) also provides for the powers of temporary possession to apply to any other Order land which is subject to compulsory acquisition under the Order provided the compulsory acquisition process has not begun in relation to it. This follows the approach adopted in a number of recent development consent orders, including the East Anglia ONE, East Anglia THREE and Hornsea Two Orders. It allows greater flexibility in the event that following further detailed design of the works it is decided that only temporary occupation rather than permanent acquisition of land is required. A benefit of structuring the Order powers in this way is also to limit the amount of land that need be ultimately acquired, or over which new rights are acquired, from landowners.
- 4.48 The provisions also depart from the Model Provisions in allowing (as well as temporary works), specific works identified in Schedule 9 and other mitigation works to be constructed and left on the land, without a requirement for these to be removed. This would apply, for example, where mitigation is provided on behalf of the Environment Agency but the undertaker does not need to retain a permanent interest or rights in the land, and has precedent in the Network Rail (Ipswich Chord) Order 2012 and the Hornsea Two Order.

Article 27 (*Temporary use of land for maintaining authorised project*)

- 4.49 This article follows Model Provision 29 and allows the undertaker to take temporary possession of any land within the Order limits during the maintenance period for the purpose of maintaining the authorised project. The maintenance period is defined as five years from the date on which the authorised project first exports electricity to the national electricity transmission network and any period falling between the date at which temporary possession is no longer permitted under article 26 and the date on which the authorised project first exports electricity to the national electricity transmission network.

Article 28 (*Statutory undertakers*)

- 4.50 This article authorises the undertaker to acquire land and new rights in land belonging to statutory undertakers as shown on the land plans within the Order land and described in the book of reference. Paragraph (a) has adapted paragraph (a) of Model Provision 31 and combined it with paragraph (c) of that same Model Provision.

- 4.51 It differs from the Model Provisions in that paragraph (b) provides for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within Order land over which powers of outright compulsory acquisition and the acquisition of rights are exercisable. Thus it is not restricted to specific apparatus which has been shown on the land plans and described in the book of reference. In practice it is impracticable to show and describe all such apparatus.
- 4.52 The power makes it unnecessary to rely on the provisions under sections 271 and 272 of the Town and Country Planning Act 1990 for extinguishing rights of statutory undertakers, but means that it is necessary to establish a process for dealing with such matters. For this reason, the article provides that the powers granted will be subject to the protective provisions in the Schedule. This article has precedent in the East Anglia THREE and Hornsea Two Orders.

Article 29 (*Recovery of costs of new connections*)

- 4.53 This article, which follows Model Provision 33, provides for compensation to owners or occupiers of property where apparatus is removed in accordance with article 28 (*statutory undertakers*).

**Operations**

Article 30 (*Operation of generating station*)

- 4.54 This article authorises the undertaker to operate the authorised project. This is not a model provision. It is included pursuant to section 140 (operation of generating stations) of the Planning Act.

Article 31 (*Deemed marine licences under the 2009 Act*)

- 4.55 This article provides for two deemed marine licences (one for the generation assets and one for the offshore transmission assets). The terms for each licence are set out in Schedules 13 and 14. The licences are required for the deposit at sea within the Order limits of the specified substances and articles and the construction works in or over the sea and/or under the seabed.
- 4.56 The deemed marine licences have been drafted in a way that allows for flexibility as to whether certain works are constructed as generation assets or transmission assets. For example, both deemed marine licences authorise the construction of the offshore platforms and platform link cables in order to avoid drawing an arbitrary line as to where the generation assets end and the transmission assets begin, however the deemed marine licences restrict what can be constructed across the two deemed marine licences to that assessed in the Environmental Statement. In addition, there are overarching controls within Schedule 1 of the Order limiting the maximum number of offshore platforms and platform link cables to that assessed in the Environmental Statement.



## **Miscellaneous and General**

### *Article 32 (Application of landlord and tenant law)*

- 4.57 This article is based on Model Provision 35 and overrides the application of landlord and tenant law so far as it may prejudice the operation of any agreement for leasing the whole or part of the authorised development or the right to operate the same agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised project.

### *Article 33 (Operational land for purposes of the 1990 Act)*

- 4.58 This article, which follows Model Provision 36, provides that development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990 (cases in which land is to be treated as operational land for the purposes of that Act). The purpose of this is to ensure that permitted development rights under Part 15 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, will apply in relation to the land used for the purposes of the authorised development.

### *Article 34 (Felling of lopping of trees and removal of hedgerows)*

- 4.59 This article provides that, subject to Article 35 (*trees subject to tree preservation orders*), the undertaker may fell or lop any tree or shrub within or overhanging the Order limits to prevent it from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.
- 4.60 Article 34 also enables the undertaker to remove hedgerows within the Order limits and important hedgerows specified in Part 1 of Schedule 11. This power is supported by the modification of Regulation 6 of the Hedgerows Regulations 1997 in article 6 of the Order.

### *Article 35 (Trees subject to tree preservation orders)*

- 4.61 This article allows the undertaker to fell or lop any tree within or overhanging land within the Order limits which is described in Schedule 12 (trees subject to tree preservation orders) or which is subject to a tree preservation order made after 25 June 2019. The reference to a certain date ensures that the provision will apply to trees that were only made subject to preservation orders after the application for a development consent order was prepared. This article has precedent in the Hornsea One Order and the Hornsea Two Order.

### *Article 36 (Certification of plans etc.)*

- 4.62 This article follows Model Provision 41 and requires the undertaker to submit copies of the documents, plans and sections referred to in the Order to the Secretary of State, for certification as true copies following the making of the Order.

Article 37 (*Arbitration*)

- 4.63 This article makes provision for any dispute arising under the provisions of the Order, unless otherwise provided for, to be settled by arbitration. The arbiter will be appointed by the Secretary of State. The concept derives from the Model Provisions but changes, including the addition of a new schedule, have been made to provide a more bespoke and relevant arbitration process.

Article 38 (*Requirements, appeals, etc.*)

- 4.64 This article applies section 78 of the Town and Country Planning Act 1990 to the Order and includes a modification to the application of that Act to provide for the normal right of appeal in relation to the discharge of a planning condition so that it applies to approvals under the provisions of the Order. This article avoids the need for the Secretary of State to have the role of determining detailed approvals under the relevant onshore requirements, which would otherwise be necessary under the 2008 Act.

Article 39 (*Abatement of works abandoned or decayed*)

- 4.65 This article authorises the Secretary of State to issue a written notice to the undertaker requiring the repair, restoration or removal of the specified works where they have been abandoned or allowed to fall into decay. This power is stated to be without prejudice to any notice served under section 105(2) of the Energy Act 2004 requiring the submission of a decommissioning scheme. This provision can be found in the East Anglia THREE Order.

Article 40 (*Saving provisions for Trinity House*)

- 4.66 This article is a standard provision taken from the harbour model clauses and was also included in Transport and Works Orders for offshore windfarms. It has since been included in the East Anglia THREE Order and the Hornsea Two Order.

Article 41 (*Crown Rights*)

- 4.67 This article is not found in the Model Provisions but protects the Crown's position in relation to its own estates, rights, powers, privileges, authorities and exemptions. The Crown's written consent is required where any land, hereditaments or rights of the Crown are to be used, entered or interfered with as a result of granting of the Order, although there is no conditionality in respect of third party interests in Crown land. This article reflects recent Orders including the East Anglia THREE Order and the Hornsea Two Order.

Article 42 (*Protective Provisions*)

- 4.68 This article gives effect to the protective provisions in Schedule 10.

Article 43 (*Funding*)

- 4.69 This article is not found in the Model Provisions but is based on precedent within the Hornsea One and Hornsea Two Orders. It precludes the compulsory acquisition

powers from being exercised before appropriate security arrangements in respect of payment of compensation are in place and are approved by the Secretary of State. The guarantee or alternative form of security need be in place for a maximum period of 15 years.

## 5. Schedules

### Schedule 1 (*Authorised Project*)

- 5.1 Part 1 of Schedule 1 specifies the authorised development comprising the numbered works.
- 5.2 The authorised development will be constructed in accordance with the design parameters set out in the requirements in Part 3 and in the Environmental Statement.
- 5.3 The project parameters are at a level of sufficient detail to enable a proper assessment of the likely environmental effects on a worst-case scenario. This approach is consistent with the “Rochdale Envelope” and the Applicant has had regard to the Planning Inspectorate’s advice note nine “Using the Rochdale Envelope”. Flexibility is required so as to ensure that the undertaker can take advantage of new developments and emerging products in the market for offshore wind turbine generators and other equipment. The potential ability to exploit these prospective factors (and take advantage of any cost benefits) is necessary in a competitive international market.
- 5.4 The ancillary works are set out in Part 2.
- 5.5 Part 3 sets out the requirements that the undertaker must comply with in relation to the construction and operation of the authorised project. These requirements take a similar form to planning conditions.
- 5.6 The requirements are based upon those contained in Schedule 4 of the Model Provisions (the **model requirements**). The model requirements are, however, necessarily general, designed for development on land and cover a wide range of schemes. Model requirements which are not relevant to the authorised development have been omitted.
- 5.7 With regard to the structure of the onshore requirements, it should be noted that the principles informing the onshore mitigation are largely set out in a number of outline documents submitted with the Application. This follows the approach taken in the East Anglia ONE and East Anglia THREE Orders.

### Requirement 1 (*Time limits*)

- 5.8 Specifies the time limit for commencing the authorised development as seven years from the date the Order comes into force.

### Requirements 2 to 9 (*Detailed offshore design parameters*)

- 5.9 These requirements set out the detailed design parameters within which the authorised development must be constructed. Requirement 2 deals with the dimensions and other

characteristics of wind turbine generators. Requirement 3 specifies the parameters associated with the offshore electrical platforms, construction, operation and maintenance platform and the meteorological mast. Requirement 4 limits the total length of inter-array cables, platform link cables and export cables. Requirements 5 to 8 restrict the dimensions of the different foundation types and Requirement 9 limits the total amount of scour protection for the structures. The purpose of these requirements is to ensure that the authorised development is restricted to that which has been assessed in the Environmental Statement.

Requirement 10 (*Offshore decommissioning*)

- 5.10 Requires a decommissioning programme to be submitted to the Secretary of State prior to the commencement of the offshore works and replicates the wording used in numerous offshore wind farm orders to date including the East Anglia THREE and Hornsea Two Orders.

Requirement 11 (*Stages of authorised development onshore*)

- 5.11 Reflects model requirement 3 and requires a written scheme setting out all the stages of the transmission works (i.e. the works from landfall to, and including, the onshore substation) and a written scheme setting out all the stages of the grid connection works (i.e. the national grid substation, overhead line realignment works and associated works) to be approved by the relevant planning authority before commencement of the transmission works and grid connection works, respectively.

Requirement 12 (*Detailed design parameters onshore*)

- 5.12 Based on model requirement 4 in requiring approval of details of the proposed works at the onshore substation and national grid substation by the relevant planning authority. It also specifies parameters in terms of the maximum size of the equipment and buildings for the onshore substation and national grid substation. Parameters are also specified for the maximum height of the cable sealing end compounds, overhead line gantries and additional, relocated or reconstructed overhead line pylons and the maximum footprints of the construction consolidation sites. The maximum working width of the onshore cable route is specified, together with exceptions to this and a restriction is placed on any jointing bay being installed within 55 metres of a building used as a dwelling-house. Taken together these restrictions ensure that the impact of the onshore works is minimised in line with the assessment and commitments contained in the Application.

Requirement 13 (*Landfall construction method statement*)

- 5.13 This requirement provides that the landfall works (i.e. Work Nos. 6 and 8) cannot commence until a method statement for the construction of the landfall works has been submitted to and approved by the relevant planning authority. The method statement must be implemented as approved.

Requirement 14 (*Provision of landscaping*)

- 5.14 Based on model requirement 7, this provision requires a landscape management plan to be approved by the relevant planning authority before the relevant stage of the onshore works may commence. The landscaping scheme must be in accordance with the outline landscape and ecological management strategy submitted with the Application and must include details of the ongoing maintenance and management of the landscaping works.

Requirement 15 (*Implementation and maintenance of landscaping*)

- 5.15 Follows model requirement 8 and requires the undertaker to implement the approved landscape management plan, and to replace trees or shrubs planted as part of the landscaping scheme which die within 5 years of planting along the cable route and trees or shrubs which die within 10 years of planting at the substation location.

Requirement 16 (*Highway accesses*)

- 5.16 Follows the first part of model requirement 10 in requiring approval of details of any permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access used by vehicular traffic, by the relevant planning authority in consultation with the relevant highway authority. The highway accesses must be constructed or altered in accordance with the approved details.

Requirement 17 (*Fencing and other means of enclosure*)

- 5.17 Follows model requirement 13 and provides that temporary and permanent fencing and other means of enclosure must be approved before the relevant stage of the onshore works is commenced and must be carried out as approved. The requirement also provides that temporary fencing must be removed after completion of the works unless otherwise approved by the relevant planning authority and that the permanent fencing around the onshore substation is in place before it is used.

Requirement 18 (*Contaminated land and groundwater*)

- 5.18 Requires that no stage of the onshore works may commence until a scheme to mitigate the potential release of contaminants has been submitted to and approved by the relevant planning authority (following consultation with the Environment Agency). It also requires the scheme to be implemented as approved.

Requirement 19 (*Pre-commencement archaeology execution plan*)

- 5.19 Requires that no intrusive pre-commencement archaeological surveys, archaeological investigations or site preparation works in respect of such surveys or investigations are carried out until a pre-commencement archaeology execution plan has been submitted to and approved by the relevant planning authority. The plan must accord with the outline pre-commencement archaeology execution plan submitted with the Application. The purpose of this requirement is to ensure that intrusive pre-commencement archaeological surveys, investigations and associated site preparation

works are subject to an appropriate approval mechanism. Such activities must be carried out in accordance with the approved plan.

Requirement 20 (*Archaeology*)

5.20 Follows model requirement 16. It provides that the relevant stage of the onshore works may not commence until a written scheme of archaeological investigation has been agreed with the relevant planning authority (in consultation with Historic England and Suffolk County Council). The scheme must accord with the outline written scheme of investigation contained in the Application. The scheme also requires to include the details set out in the requirement.

Requirement 21 (*Ecological management plan*)

5.21 Reflects model requirement 17 and provides that the onshore works shall not commence until an ecological management plan for that stage of the onshore works based on the outline landscape and ecological management strategy submitted with the Application and reflecting the surveys, mitigation and enhancement measures in the Environmental Statement has been approved by the relevant planning authority in consultation with the relevant statutory nature conservation body. The ecological management plan is required to include a breeding bird protection plan and various method statements as specified within the requirement and must be implemented as approved.

5.22 Requirement 21 also requires an ecological management plan to be submitted to and approved by the relevant planning authority in consultation with the relevant statutory nature conservation body in respect of the onshore preparation works prior to such works being carried out.

Requirement 22 (*Code of construction practice*)

5.23 Provides that the relevant stage of the onshore works shall not commence until a code of construction practice for that stage of the onshore works has been submitted to and approved by the relevant planning authority. The code must cover all the matters in the outline code of construction practice submitted with the Application as well as the matters listed within the requirement and it must be implemented as approved.

Requirement 23 (*Construction hours for the transmission works*)

5.24 Adapts model requirement 24 and provides for construction hours for the onshore transmission works on specified days, with exceptions for certain activities such as continuous operations, delivery of abnormal loads, testing or commissioning activities and other cases agreed with the relevant planning authority.

Requirement 24 (*Construction hours for the grid connection works*)

5.25 Adapts model requirement 24 and provides for construction hours for the grid connection works on specified days, with exceptions for certain activities such as continuous operations, emergency works, testing or commissioning of electrical plant and other cases agreed with the relevant planning authority.

Requirement 25 (*Control of artificial light emissions during operational phase*)

- 5.26 Requires that the onshore substation, national grid substation must not begin operation until operational artificial light emissions management plans providing details of artificial light emissions during the operation of those works have been approved by the relevant planning authority. The approved plan must be implemented upon, and maintained during, the operation of the relevant works.

Requirement 26 (*Control of noise during operational phase*)

- 5.27 Sets limits for noise arising from the operation of the onshore substation and specifies locations for measuring the noise.

Requirement 27 (*Control of noise during operational phase cumulatively with East Anglia ONE North onshore substation*)

- 5.28 Sets limits for noise arising from the operation of the onshore substation cumulatively with the operation of the East Anglia ONE North onshore substation and specifies locations for measuring the noise.

Requirement 28 (*Traffic*)

- 5.29 Requires that no stage of the onshore works can commence until a construction traffic management plan (in accordance with the outline construction traffic management plan) and a travel plan (in accordance with the outline travel plan) in respect of that stage have been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The requirement requires that the plans are implemented on commencement of the relevant stage of the onshore works.

Requirement 29 (*Restoration of land used temporarily for construction*)

- 5.30 Provides that any land (landward of mean low water) used temporarily as part of the onshore works must be reinstated in accordance with details approved by the relevant planning authority in consultation with the relevant highway authority (save, for the avoidance of doubt, where the land forms part of the approved permanent works or the approved landscaping) within twelve months after completion of the relevant stage of the onshore works, or such other period as the relevant planning authority may approve.

Requirement 30 (*Onshore decommissioning*)

- 5.31 Provides that following the cessation of commercial operation of the transmission works and the grid connection works, onshore decommissioning plans in respect of those works must be submitted to and approved by the relevant planning authority. The decommissioning plans must be implemented as approved.

Requirement 31 (*Aviation Lighting*)

- 5.32 Provides that lighting must be used as determined necessary for aviation safety.

Requirement 32 (*Public rights of way*)

- 5.33 Follows model requirement 11 and prevents any stage of the onshore works that would affect a public right of way specified in Schedule 3 or Schedule 4 from commencing until a public rights of way strategy in respect of that stage and in accordance with the outline public rights of way strategy, has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority. Any alternative public rights of way must be implemented in accordance with the approved strategy.

Requirement 33 (*Emergency incident response plan*)

- 5.34 Provides for the approval an emergency incident response plan in relation to the transmission works in the vicinity of the Sizewell nuclear power station prior to the construction of those works. The plan is to be approved by the relevant planning authority and is to be carried out as approved. This is based on a similar requirement in the Galloper Wind Farm Order 2013.

Requirement 34 (*Ministry of Defence surveillance operations*)

- 5.35 Ensures that appropriate measures to mitigate any adverse effects which the operation of the authorised development will have on the air defence radar at Remote Radar Head (RRH) Trimingham and the Ministry of Defence's air surveillance and control operations are available and that arrangements have been put in place with the Ministry of Defence to ensure that such appropriate mitigation is implemented for the period specified within the requirement.

Requirement 35 (*Cromer Primary Surveillance Radar*)

- 5.36 Ensures that appropriate measures to mitigate any adverse effects which the operation of the authorised development will have on the primary surveillance radar at Cromer and NATS' air surveillance and control operations are available and that arrangements have been put in place with NATS to ensure that such appropriate mitigation is implemented for the period specified within the requirement.

Requirement 36 (*Port travel plan*)

- 5.37 Requires that a port travel plan for the onshore port-related traffic to and from the selected base port during construction and/or operation is approved by the relevant planning authority in consultation with the relevant highway authority unless the relevant planning authority has confirmed, after consultation with the relevant highway authority, that no port travel plan is required for that part of the authorised development. For the purposes of this requirement "relevant planning authority" and "relevant highway authority" are the planning and highway authority in whose area the relevant selected base port is located.

Requirement 37 (*Decommissioning of Work No. 8*)

- 5.38 Requires the undertaker to submit a report to the relevant planning authority after 24 years but before 25 years following the completion of construction of Work No. 8



detailing the extent of coastal retreat since construction, remedial works or mitigation measures required during the period since construction, the extent of likely coastal retreat during the anticipated remaining operational lifespan of the authorised project and the likely need for, and nature of, any proposed remedial works or mitigation measures to protect Work No. 8 from coastal retreat during the remaining period. If it cannot be demonstrated that, taking into account any proposals for such remedial works or mitigation measures, Work No. 8 will not have a significant impact on coastal processes then it must be decommissioned.

**Requirement 38** (*Restriction on carrying out grid connection works consented in East Anglia ONE North Order*)

5.39 Prevents any part of the grid connection works being constructed under the Order where those works have been or are being constructed under the East Anglia ONE North Order.

**Requirement 39** (*Requirement for written approval*)

5.40 Provides that where any requirement requires the approval of the Secretary of State, the relevant planning authority or another person such approval shall be in writing.

**Requirement 40** (*Amendments to approved details*)

5.41 Amends model requirement 37 and provides that any details approved pursuant to any requirement shall be taken to include any amended details which are subsequently approved, provided that any amendments to or deviations from the approved details are in accordance with the principles and assessments set out in the Environmental Statement.

**Schedule 2** (*Streets subject to street works*)

5.42 Sets out those streets which are to be the subject of street works.

**Schedule 3** (*Public rights of way to be temporarily stopped up*)

5.43 Sets out those public rights of way which are to be temporarily stopped up.

**Schedule 4** (*Footpaths to be stopped up*)

5.44 Sets out the footpaths which are to be stopped up.

**Schedule 5** (*Streets to be temporarily stopped up*)

5.45 Sets out those streets which are to be temporarily stopped up

**Schedule 6** (*Access to works*)

5.46 Sets out details of access points to the works.

**Schedule 7** (*Land in which only new rights etc may be acquired*)

5.47 Sets out details of such land. It sets out the purposes for acquisition of new rights over specified plots.

5.48 In accordance with the Guidance issued by the Secretary of State, it specifies rights that apply to the relevant plots set out in the Book of Reference, and also details, where relevant, the restrictive covenants that apply to the relevant plots to protect the installed cables.

**Schedule 8** (*Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions*)

5.49 Sets out changes to the operation of the legislation relating to compulsory purchase.

**Schedule 9** (*Land of which temporary possession may be taken*)

5.50 Sets out details of such land that may be occupied under temporary powers.

**Schedule 10** (*Protective provisions*)

5.51 Sets out protective provisions for statutory undertakers affected by the authorised development.

**Schedule 11** (*Hedgerows*)

5.52 Sets out those important hedgerows to be removed (Part 1) and those important hedgerows where a reduced construction swathe will be utilised to cross the hedgerow (Part 2).

**Schedule 12** (*Trees subject to tree preservation orders*)

5.53 Sets out the trees subject to tree preservation orders within or overhanging land within the Order limits and the works to be carried out in respect of such trees.

**Schedule 13** (*Deemed licence under Marine and Coastal Access Act 2009 – generation assets (licence 1)*) and **Schedule 14** (*Deemed licence under Marine and Coastal Access Act 2009 – transmission assets (licence 2)*)

5.54 Schedules 13 and 14 set out the deemed marine licences for the authorised project.

5.55 The Model Provisions do not provide a draft deemed marine licence, however standard provisions and structure have been developed and included within Orders granted under the 2008 Act. The draft deemed licences comprise provisions relating to the generation assets (Schedule 13) and the transmission assets (Schedule 14) within this draft Order and have been developed in discussion with the MMO, Maritime and Coastguard Agency and Trinity House.

5.56 The licences are deliberately drafted to be standalone documents. This reflects the fact that they will have a wide distribution to contractors and agents. Also, they are documents which, based on past experience, are likely to be varied from time to time. Such variations will be much easier to follow if the licences have been prepared on a standalone basis. As a result, there is intentional repetition from the main Order of various definitions and the description of the authorised works.

5.57 The provisions referred to below relate to the deemed marine licences for the generation assets (licence 1) and the transmission assets (licence 2). Where there are differences in numbering of provisions between the licences, this is noted.

## **Part 1 – Licensed marine activities**

- 5.58 Paragraph 1 (*Interpretation*) provides interpretation of certain words and phrases used in the licence and contact details for key organisations relevant to the content of the licence. Many of the definitions (including the different types of foundations and other structures such as wind turbine generators and the meteorological mast) are identical to those used in the main Order.
- 5.59 Paragraphs 2 to 4 (*Details of licensed marine activities*) specify the licensable marine activities which are authorised by the licence in connection with the construction and operation of the generation assets (licence 1) and offshore transmission assets (licence 2). The section deliberately repeats in full the description of the relevant works from Part 1 of Schedule 1. Reference is also included to disposal of material as a result of preparation works for construction of the generating station and associated development (as appropriate).
- 5.60 Paragraph 5 sets out the grid coordinates for those works within the deemed marine licence.
- 5.61 Paragraph 6 confirms that the deemed marine licence shall remain in force until the scheme has been decommissioned.
- 5.62 Paragraph 7 confirms that section 72(7) and (8) (*Variation, suspension, revocation and transfer*) of the 2009 Act does not apply to a transfer of the deemed marine licences falling within article **Error! Reference source not found.** (benefit of the Order). Section 72(7) permits the licensing authority to transfer a marine licence to another person. Section 72(8) provides that "a licence may not be transferred except in accordance with subsection 7". Article 5 (*Benefit of the Order*) however provides for the transfer to take place in a different way to section 72(7). Since article 5 is different from the precise wording of section 72(7) of the 2009 Act it is necessary to specify that section 72(7) only applies to a transfer not falling within article 5 in order to enable article 5 to operate. Without specifying this, article 5 might be claimed to be inoperative because of adopting a different wording from section 72(7).
- 5.63 Paragraph 8 confirms that where any condition requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under the licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved by the MMO.
- 5.64 Paragraph 9 notes that any amendments to approved details must be in accordance with the principles and assessments set out in the Environmental Statement.

## **Part 2 – Conditions**

- 5.65 Conditions 1 to 9 of licence 1 and conditions 1 to 5 of licence 2 (*Design parameters*) specify the design parameters associated with the works comprised within the authorised scheme. This largely replicates requirements 2 to 9 of Part 3 of Schedule 1 however since the offshore platforms and platform link cables are permitted under both licences, each licence includes a condition preventing the total number of

offshore platforms and the total length of platform link cables constructed across both licences from exceeding the maximum assessed within the Environmental Statement and authorised under Schedule 1 of the Order. The licences also include some restrictions which are not included in Schedule 1 of the Order, this is because it is considered more appropriate for these parameters to be controlled within the deemed marine licences due to their nature (i.e. parameters associated with deposit volumes such as volume of scour protection).

- 5.66 Condition 10 of licence 1/Condition 6 of licence 2 (*Notifications and inspections*) provides for a system of supplying copies of the licence to agents and contractors, restricting the use of contractors and vessels to those notified to the MMO, and publicising commencement and progress of the licensed activities.
- 5.67 Conditions 11 and 12 of licence 1/Conditions 7 and 8 of licence 2 (*Aids to navigation*) provide for various matters to aid navigation in the vicinity of the authorised scheme, including the provision of various navigation aids; the ongoing availability of the aids to navigation; notification of the progress of works to Trinity House and the MMO and the colouring of structures. These are all standard provisions which have been incorporated into recently granted Orders under the 2008 Act in respect of offshore wind farms.
- 5.68 Condition 13 of licence 1/Condition 9 of licence 2 (*Aviation safety*) requires the undertaker to notify the Defence Infrastructure Organisation Safeguarding regarding the construction of the scheme and its parameters.
- 5.69 Condition 14 of licence 1/Condition 10 of licence 2 (*Chemicals, drilling and debris*) restricts the use of chemicals and other substances and provides for the disposal of certain drilling arisings and the monitoring of construction materials so as to identify those which may accidentally fall into the sea, which shall then be investigated and, where identified, recovered.
- 5.70 Condition 15 of licence 1/Condition 11 of licence 2 (*Force majeure*) provides for the notification of deposits made in an emergency.
- 5.71 Condition 16 of licence 1/Condition 12 of licence 2 (*UXO clearance*) restricts the removal or detonation of UXO until a method statement, marine mammal mitigation protocol and Southern North Sea SAC Site Integrity Plan for UXO clearance have been approved by the MMO. UXO clearance has been excluded from the definition of “commence” so that such activities can be carried out prior to construction works, along with other pre-commencement activities, without the need to discharge all of the pre-construction conditions first (such as condition 17 of licence 1/condition 13 of licence 2) . This condition has therefore been inserted in order to provide the MMO with comfort that such activities will only be carried out in accordance with approved plans.
- 5.72 Condition 17 of licence 1/Condition 13 of licence 2 (*Pre-construction plans and documentation*) provides for the submission for approval, before the commencement of licensed activities, of a plan showing the proposed location, dimensions and choice

of foundation of all elements of the authorised scheme to ensure that the licensed activities conform with the description of the works and the design parameters specified within the conditions. It also provides for submission for approval of a construction programme and monitoring plan, a construction method statement, a project environmental management plan, a marine mammal mitigation protocol (where driven or part driven foundations are proposed), a written scheme of archaeological investigation, an offshore operations and maintenance plan and an aids to navigation management plan. In the event that driven or part-driven pile foundations are proposed to be used, the condition provides that before commencement of licensed activities a project specific Southern North Sea SAC Site Integrity Plan for piling (which accords with the submitted in principle plan) must be submitted to the MMO and the MMO must confirm that it is satisfied that the plan provides mitigation as is necessary to avoid adverse effects on the integrity of the Southern North Sea SAC, to the extent that harbour porpoise are a protected feature of that site.

- 5.73 Condition 18 of licence 1/Condition 14 of licence 2 requires any archaeological reports produced in accordance with the pre-construction plans and documentation condition to be agreed with Historic England. It also requires each of the documents for approval under that condition to be submitted for approval at least six months prior to the intended start of construction, and that each approved document be complied with. Finally, it states that no part of the authorised scheme may commence until the MMO has confirmed that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate contained within MGN543 and its annexes.
- 5.74 Condition 19 of licence 1/Condition 15 of licence 2 (*Reporting of engaged agents, contractors and vessels*) requires the undertaker to provide to the MMO details of agents and contractors engaged to carry out the licensed activities, and a weekly update as to which vessels are being used during construction.
- 5.75 Condition 20 of licence 1/Condition 16 of licence 2 (*Pre-construction monitoring and surveys*) specifies the manner in which the undertaker shall discharge its obligation under Condition 17 of licence 1/Condition 13 of licence 2 to put forward proposals for pre-construction surveys/monitoring, and provides an indicative list of the expected pre-construction surveys.
- 5.76 Condition 21 of licence 1/Condition 17 of licence 2 (*Construction monitoring*) specifies the manner in which the undertaker shall discharge its obligation under Condition 17 of licence 1/Condition 13 of licence 2 to put forward proposals for construction surveys/monitoring, and specifically requires certain noise monitoring. It provides for the MMO to require further noise monitoring depending on the results.
- 5.77 Condition 22 of licence 1/Condition 18 of licence 2 (*Post construction*) specifies the manner in which the undertaker shall discharge its obligation under Condition 17 of licence 1/Condition 13 of licence 2 to put forward proposals for post-construction

surveys/monitoring, and provides an indicative list of the expected post-construction surveys.

- 5.78 Condition 23 of licence 1/Condition 19 of licence 2 (*Reporting of impact pile driving/detonation of explosives*) provides that where driven or part-driven pile foundations or detonation of explosives are proposed to be used the undertaker must provide information of the expected location, start and end dates of impact pile driving/detonation of explosives to the MMO.

**Schedule 15** (*Arbitration Rules*)

- 5.79 This schedule provides an arbitration process secured by the Order. The exact wording in the schedule is not found in any previously made development consent orders, but it is based on similar schedules in the draft development consent orders for Hornsea Project Three and Norfolk Vanguard offshore wind farms.
- 5.80 The Applicant considers that it is important to provide a robust process within which substantive differences between the parties can be resolved. The intention is to achieve a fair, impartial and binding award on substantive differences between the parties and to receive determination within 4 months from the date the arbitrator is first appointed to ensure that disputes are resolved quickly. Given the need for new power projects, and in particular, for renewable energy, as identified in the National Policy Statements, it is imperative that any disputes are resolved promptly to enable delivery of the authorised project in a timely manner.
- 5.81 Schedule 15 refers to the person who commenced the arbitration as the Claimant and the other party as the Respondent.
- 5.82 The timetable for the process is as follows:
- (a) Within 14 days of the Arbitrator being appointed the Claimant must serve on the Respondent and the Arbitrator a statement of claim and all supporting evidence to support the claim.
  - (b) Within 14 days of receipt of the Claimant's statement of claim and supporting evidence the Respondent must serve on the Claimant and the Arbitrator a statement of defence and all supporting evidence to support its defence, together with any objections to the Claimant's documentation.
  - (c) Within 7 days of receipt of the Respondent's documentation the Claimant may make a Statement of Reply.
- 5.83 The costs of the arbitration will be awarded by the Arbitrator and the principle that costs will follow the event will be adopted. Costs will include the Arbitrator's costs together with the reasonable legal fees and other costs incurred by the parties. Provision is also made for conservatory or interim measures to be awarded.