

WRITTEN REPRESENTATION FOR SPR EA1N and EA2 PROJECTS (DEADLINE 1)



Draft DCOs

Interested Party: SASES **PINS Refs:** 20024106 & 20024110

Date: 30 October 2020

Issue: 2

Summary

1. The draft DCOs have a significant number of major flaws as follows.
 - There are serious omissions particularly in the Requirements.
 - The parameters of the authorised projects are either excessive or absent.
 - There is a lack of effective control over SPR and National Grid in key areas.
 - The consequences of two projects in a single DCO where one of those projects (the National Grid connection hub NSIP) is also the subject of another DCO are not properly addressed.
 - There is no requirement to consult the local community in matters which directly affect it.
 - A secret and exclusionary dispute resolution mechanism is proposed.
2. The key points are set out in greater detail below. Please note the order in no way indicates the relative importance of these issues. There is also attached a detailed analysis of the DCOs setting out all representations in greater detail and suggesting how the deficiencies in the DCOs might be addressed.
3. This written representation focuses on the onshore works and no comment is made at this stage on the DCO in respect of the offshore works.
4. The following issues need to be addressed and rectified together with the issues raised in the detailed analysis which is attached.

Onshore preparation works

5. Onshore preparation works are widely defined and include important works such as site clearance, demolition work, pre-planting of landscaping works, ecological mitigation, footpath creation, highway alterations etc. However because of the way the DCO is drafted (see definition of “commence”) these seem to be excluded from the control mechanisms set out in Part 3 of Schedule 1 – Requirements.

Right to build operational access road granted four times

6. The 8m(27ft) wide and 1.7km (1.1mile) long operational access road is part of both the SPR NSIPs and the National Grid connection hub NSIP. Accordingly the rights granted to build a single road are granted four times. It is assumed given the further works that will be necessary at the National Grid connection hub for the other offshore energy projects (Nautilus, Eurolink, extension projects etc – see Written Representations concerning Cumulative Impact) that this road will in fact become part of the National Grid connection

hub NSIP. The interrelationship between the two DCOs and the National Grid connection hub NSIP needs to be clarified.

Excessive flexibility with regard to maintenance

7. Whilst SPR and National Grid have a right to maintain their authorised projects but they have no obligation to do so. Further maintenance includes the right to “alter” the authorised project which represents an unwelcome extension to their rights.

Absence of an obligation to consult the community

8. In a number of areas where the conduct of the works will have a direct effect on the community (for example highway and footpath closures, use of watercourses) and where greater detail needs to be agreed with the local planning authority there is no obligation to consult the local communities affected.

The use of a secret and exclusionary dispute resolution mechanism

9. Whilst arbitration has its place in the resolution of commercial disputes it is not appropriate given the public interest in ensuring NSIPs are properly conducted. Further given the additional expense arbitration can involve this will only operate to further exclude members of the community from seeking redress in the event of non-compliance with the DCOs.

Excessive flexibility to determine generating capacity

10. There is a history, despite the need for renewable energy, of the generating capacity of offshore wind farms being reduced by developers. However when this happens there is no commensurate reduction in the size of the infrastructure or land take onshore - see Written Representations concerning the Rochdale Envelope/Design. Despite EA1N and EA2 being described to have a generating capacity of 800MW and 900MW respectively the DCOs only require a 100MW windfarm to be constructed. In the absence of any requirement to reduce the scale of onshore infrastructure in the case of reduced generating capacity this 100MW figure should be replaced by a range of 750MW to 800MW in the case of EA1N and 850MW to 900MW in the case of EA2.

Lack of clarity in respect of requirements compliance

11. The rights to construct and operate the National Grid connection hub will undoubtedly be transferred to National Grid which will have a separate contractual relationship with its building contractor. Whilst in respect of some of the requirements it can be clearly identified which of SPR and National Grid will have responsibility, that is not true for all requirements (for example, implementation and maintenance of landscaping, control of noise, control of artificial light) To avoid any confusion there should be a clearly identified list of requirements for the SPR NSIP and a separate clearly identified list of requirements for the National Grid connection hub NSIP.

Seven year time limit

12. SPR and National Grid have up to 7 years in which to commence the works under each DCO. This is excessive.

Parameters are excessive or non-existent

13. Written Representations have been made in respect of the use of the Rochdale Envelope and substation design. No justification has been made for the parameters set out in the DCOs nor is there any requirement to design the onshore infrastructure efficiently from an engineering perspective, the focus is on aesthetics only contrary EN-1, EN-3 and EN-5. Furthermore the National Grid substation is not subject to the outline onshore substation design principles statement and the remainder of the National Grid connection hub cable sealing ends etc is not subject to any design control nor is there any parameter in respect of their areas.
14. Given the impact of the onshore infrastructure on the landscape, heritage assets and flood risk these parameters need to be independently verified and any detailed design subject to an independent review both from the perspective of aesthetics and engineering efficiency to reduce the area and height of all the onshore infrastructure located at Friston – see further written representations on the Rochdale Envelope.
15. There are no parameters associated with the operational access road width, length etc nor is there any control over its design, drainage, fencing etc.
16. There are a number of other parameters in Paragraph 12 of Part 3 of Schedule 1 but there does not seem to have been any independent justification that these parameters are reasonable.
17. There is no requirement to reduce the size of the grid connection works if only one SPR substation is built

Consecutive construction periods, excessive construction hours and inadequate OCoCP

18. The Applicant has the flexibility to decide whether to build the projects concurrently or consecutively. This is the effect of separate DCOs for projects which are identical onshore for practical purposes. This has simply created yet greater uncertainty and has the potential for prolonging an extremely disruptive construction process. The Applicant should not be permitted to build the cable routes consecutively. Both must be built at the same time. Whilst that might involve a small element of financial risk that is more than offset by the benefits. In terms of construction at the substation site a mechanism needs to be introduced into both the DCOs to minimise consecutive construction. This cannot be left at the discretion of the Applicant.
19. Friston and most of the onshore cable route is a tranquil rural area with a number of elderly and retired residents who spend a significant amount of time in their homes and gardens. Any construction work will have a significant impact on the quiet enjoyment of their property and their lives. In such circumstances weekend working is not acceptable nor is working until 19:00 hours. Working hours should be 08:00 to 16:00 with no weekend or bank holiday working. Furthermore there should be no construction traffic outside of these hours. In addition there are a number of circumstances in which SPR and National Grid can work outside of these hours. On the basis the current drafting these rights could be used if the need for extra working was caused by mismanagement of the works.

20. There is insufficient detail in the OCOCOP in a number of areas - see Written Representations concerning Noise - see Written Representations concerning Construction both Substation and Onshore Cable Corridor.

Absence of flood risk strategy

21. There is a serious flood risk at the Friston site (see Written Representations concerning Flood Risk) and yet there is no requirement to develop and agree a strategy to address this risk.

Requirements in respect of operational noise inadequate

22. As set out in the Written Representations concerning Noise, the Environmental Statement on this topic is defective. As a result the requirements concerning operational noise are inadequate and fail to address the reality of all the noise impacts resulting from the onshore substation and the National Grid connection hub, which is omitted from the requirements in respect of noise.



**WRITTEN REPRESENTATION FOR
SPR EA1N and EA2 PROJECTS (DEADLINE 1)**

DRAFT DEVELOPMENT CONSENT ORDERS (DETAIL)

Interested Party: SASES **PINS Refs:** 20024106 & 20024110

Date: 31 October 2020

Issue: 2

EA1N/EA2 DCO section/paragraph no	Issue	Suggested change
PART 1		
Definition of “commence” and exclusion of onshore preparation works	The exclusion of onshore preparation works from the definition of commence is problematic because of the breadth of the definition of these works which goes significantly beyond a matter of conducting surveys it includes site clearance, demolition, pre-planting of landscaping, ecological mitigation, diversion and laying of services, Direction of temperamental enclosure, creation of site accesses, footpath creation, highway alterations. However by excluding such works from the definition of commence this could mean that these works will not be subject to the requirements set out in Part three of Schedule one which many of which are only triggered by “commencement” of works. For example paragraph 14 – provision of landscaping, paragraph 15 – implementation and maintenance of landscaping, paragraph 17 – fencing and other means of enclosure, paragraph 21 –ecological management plan, paragraph 22 – code of construction practice is, paragraph 28 – traffic, paragraph 32 – public rights of way.	If the exclusion of onshore preparation works is to be included in this definition then the definition of onshore preparation works needs to be substantially narrowed and be limited to survey work only.
Definition of “maintain	This definition includes the word “alter”. The meaning of alter is to broad/uncertain and goes beyond the concept of maintenance. This is very important as maintain is a key definition for rights to enter and use land and in relation to Noise pollution/nuisance – see Section 7	The word “alter’ should be removed from the definition of maintain.
Grid connection works include work No. 34	Work No. 34 is the permanent operational access road, which is referred to twice, both in the description of the SPR NSIP in paragraph 1 of Part 1 of Schedule 1 and in the description of the National Grid NSIP in paragraph 2 of Part one of Schedule 1. This means that if both DCOs are granted the rights to build a permanent access road will be granted four times.	It should be clarified which NSIP work number 34 is part of. It is assumed given the plans to expand the National Grid substation that should be Part of the National Grid NSIP

	There is a reference to “associated development” which is not defined. Is this meant to be a reference to the associated development set out in the description of the NSIPs in Schedule 1?	“associated development” should be defined by reference to the associated development described in Part 1 of Schedule 1
Definition of “onshore works”	Given the scope of the onshore preparation works which includes landscaping works, footpaths etc (which should be the subject of the Requirements set out in Part 3 of Schedule 1) the definition of onshore works should include a reference to the onshore preparation works being part of the onshore works. Presumably there are separate onshore preparation works for each NSIP and these will be carried out on behalf of two different parties, SPR and National Grid.	The words “which for the avoidance of doubt include the onshore preparation works” should be added to the definition of onshore works. It should be clarified which onshore preparation works relate to each NSIP.
Definition of “onshore preparation works”	See comments above. A number of the onshore preparation works involve matters which will have a significant impact on the landscape, ecology etc and their conduct should mean that the authorised project has commenced. For example works which should not be considered to be part of preparation are site clearance, demolition work, pre-planting of landscape works, ecological mitigation, remedial work in respect of any contamination, diversion of services, creation of site accesses, footpath creation, highway alterations etc. Their inclusion in the definition of onshore preparation works could mean that they are excluded either in whole or in part from the Requirements set out in Part 3 of Schedule 1.	This definition should be amended so that it only refers to investigation and survey work. The relevant paragraphs of Part 3 of Schedule 1 should apply to the remainder of what are described as onshore preparation works
Definition of “order limits”	This is a critical definition as this is the only limitation on how the SPR will conduct the works. This restriction is set out in section 3(1). The order limits are defined by reference to the limit shown on the works plans which are to be certified. This would lead one to the conclusion that the only control over the size and manner of the development is as set out in the plans and Part 3 of Schedule 1. In relation to the area subject temporary use many these areas come extremely close to residential dwellings and communities. For example there is a temporary working area which comes right to Church Road a road which runs alongside Friston Parish Church a Grade II* listed building on which there are residential dwellings	The areas for working which are close to residential dwellings or heritage assets should be eliminated unless there is clear overriding need for that land to be used and such use should be minimised. It should be noted that the SPR has a substantial area for construction consolidation sites.
Transmission works includes work No.. 34	See comments on the definition of grid connection works above.	

Definition of "undertaker"	It needs to be clarified that the undertaker is not only East Anglia ONE North Limited (or East Anglia TWO Limited) but any person or persons to whom the benefit of the Order is transferred which in the case of the National Grid NSIP will be the relevant division of National Grid	Definition to be amended
PART 2		
3	This provides that the SPR is given consent for the authorised development on the basis it is carried out within the order limits. However it is not stated that the authorised development is also subject to Part 3 of Schedule 1 - Requirements	Section to be amended to include an express reference to Part 3 of Schedule 1
4	This section sets out a right to maintain the authorised project but there does not appear any obligation (as opposed to a right) to maintain the authorised project.	The section should be amended to contain express obligation for SPR and National Grid to maintain their respective NSIPs.
5	There are broad rights to transfer the benefit of the order – there needs to be clarity that for the NG NSIP the rights will be transferred to NG and when – we understand NG will be carrying out these works. No consultation is required ahead of any transfer. Given consent will be granted twice for the same works how will these consents interact with each other particularly in relation to transfer. Presumably if these rights are exercised under one DCO the consent granted under the other DCO should be extinguished?	These issues need to be addressed
7	This article modifies provisions in respect of statutory nuisance by reference to the noise requirements and to whether impacts can "reasonably be avoided". The difficulties with requirements 26 and 27 are explained in the Written Representations concerning Noise. The "reasonably be avoided" test is an unnecessary qualification since a defence of using "best practicable means" is in any event available. The statutory test should be maintained	Delete article 7(1)(a)(ii) and 7(1)(b)
7	The defence to proceedings for statutory nuisance should only be available if the undertaker has and is complying with the requirements set out in Part 3 of Schedule 1	A new section 7 (3) to be inserted setting out that the provisions of section 7(1) and (2) shall only have effect if the undertaker has and is complying with the requirements set out in Part 3 of Schedule 1.
PART 3	Anything in this Part that requires the approval of the relevant highways authority or planning authority should also require consultation with the relevant Parish Council given the impact on people's daily lives these powers will have.	An express reference to the need to consult relevant parish councils to be inserted
10	This section should be entitled "Permanent stopping up of public rights of way" to be consistent with section 11.	

12	These rights are extremely broad. They not only extend to specified streets but also <u>any</u> other streets.	The undertaker should be restricted to the identified streets as it is for PROWs
13	These are rights are extremely broad. They not only extend to specified means of access but also any other access which may be reasonably required. There should be restrictions as to what each of the means of access can be used for.	The undertaker should be restricted to the means of access specified in Schedule 6. For example AC5 is not required for the project other than for abnormal indivisible loads. Construction works for the operational access road (work no. 34) should be accessed from the main substation site for which access is AC4
PART 4		
16	This section relates to the discharge of water into water courses etc. Given the serious flood risk at the substation site and at Friston the undertaker should consult with Friston Parish Council before exercising any rights under this section. See comments on Part 3 of Schedule 1 - Requirements below relating to the absence of requirements in respect of operational flood risk.	
30	This section authorises the operation of the "generating station". This term is not defined. Any rights granted to operate the development should be subject to compliance with all the provisions of the DCO relating to operational matters for example Part 3 of Schedule 1	It needs to be clarified what the generating station means. New section 30(3) to be inserted requiring compliance with the DCO including without limitation Part 3 of Schedule 1
33	The significance of this section needs to be explained	
34(1)	It needs to recognised that cutting back the roots of a tree or shrub may well involve the destruction of that tree or shrub. The felling or other destruction should only be permissible where it is "necessary" not when the developer reasonably believes it to be.	Delete the words "reasonably believes it to be". After the word "apparatus" insert the words "which it is necessary to use" and remove the word "used".
34(4)	This provision relates to the destruction of hedgerows and it should be subject to the same tests as those which have to be fulfilled for the destruction of trees or shrubs. A test of "that may be required" gives far too much scope for the unnecessary destruction of hedgerows.	Delete the words "that may be required" and replace with the words "that it is necessary to remove"
35(1)	This section permits the felling of trees subject to TPOs. The cut-off date of 25 June 2019 is too early.	The cut-off date should be the latest possible date at which all relevant trees could be identified.

	<p>The destruction of tree should only be permissible where it is “necessary” not when the developer reasonably believes it to be.</p> <p>Sub section (b) refers to “passengers or other persons using the authorised project”</p>	<p>Delete the words “reasonably believes it to be”.</p> <p>This wording would seem to be superfluous and should be deleted</p>
35(2)	<p>This Section would appear to remove the obligation to replace trees which are destroyed.</p>	<p>The developer should be required to plant trees in locations to be agreed to replace those which are destroyed such trees to be capable of meriting TPO status in the future.</p>
36	<p>This Section certifies key documents referred to in the DCO and in particular documents which set out in greater detail matters which are subject to Part 3 of Schedule 1 – Requirements. Given the importance of these documents it is essential that their content is clearly agreed by the local authority and that the community is aware of any changes since the applications.</p>	<p>When the final versions of these documents are determined they must be marked up to show all changes from the documents submitted with the applications so it is clear what changes have been made during the course of the examination process. Prior to submitting the final version of these documents to the Secretary of State for certification it should be accompanied by a statement from the local authorities that the document is in the form agreed during the course of the examination.</p>
37	<p>This section replaces the jurisdiction of the courts as a forum for disputes with arbitration. Arbitration has a number of disadvantages which will act to the detriment of the community/private individuals – see commentary The Problems With Arbitration</p>	<p>This section should be deleted and be replaced with the jurisdiction of the courts of England and Wales.</p>
39	<p>The works referred to are offshore works. It is not appropriate that these should be allowed to be abandoned or allowed to fall into decay. Therefore the Secretary of State <u>must</u> require the undertaker at its own expense to repair and restore or remove these works. Not to do so would be inconsistent with the environmental credentials of offshore wind.</p> <p>This section should apply to the entirety of the authorised project and not just work nos 1, 2 and 3, namely the wind turbines and offshore platforms</p>	<p>Delete the words “may, Following consultation with the undertaker,” and replace by the word “must”</p> <p>This section should be amended to refer to the authorised project rather than a limited number of works.</p>
SCHEDULE 1		
PART 1		

Work No.1	No upper generated power limit specified, only to be in excess of 100MW. EA1N and EA2 have been described to be 800 MW and 900 MW windfarms Given the history of downsizing of wind power projects (See Written Representations concerning the Rochdale Envelope and Design) and the need for renewable energy there needs to be a greater obligation upon SPR to deliver this power if the project is to go ahead.	Electrical output capacity to be specified to be in the range 750MW to 800 MW (EA1N) and 850MW to 900MW (EA2)
Works Nos. 6 - 32	There are many references to cable ducts in these Works Nos. It does not seem to be specified how many cable ducts there will be this needs to be clarified as there is no reference in Part 3	Number of cable ducts to be specified, such number of ducts to be any those necessary for EA1N and EA2.
Work No. 30	This should refer to the onshore substation as defined	the words “a new” should be substituted by “the”.
Work No. 34	This work is included both in the SPR NSIP and the National Grid NSIP. It is unclear what this means in practice. Will SPR and National Grid be jointly responsible for these works and the mitigation which will require to be maintained post development? Can the rights granted in respect of work number 34 be transferred to 2 separate parties or can only be transferred to one party. This needs to be clarified. It also needs to be clarified what rights each party will have in relation to the use of work number 34 in the future. This road is to be an “operational” access road; it should not be used for construction purposes either for this authorised project or for the subsequent projects, Nautilus, Eurolink, the extension project, SCD1 and SCD2	tbd
Work No. 38	As there is for the onshore substation and National Grid substation it would be helpful to have a definition of cable sealing end compound to understand what they are. The description is very vague.	tbd
Work No. 41	This should refer to the national grid substation as defined	the words “a new” should be substituted by “the”.
SCHEDULE 1 PART 2	Given the wide definition of further associated development set out in paragraphs 1 and 2 of Part 1 of Schedule 1 it would seem unnecessary to have a definition of ancillary works.	Delete Part 2 and amend Part 1 as necessary
SCHEDULE 1 PART 3	Given there are two separate NSIPs and the rights under the DCO may be transferred from SPR to two different organisations one of which will be National Grid it would be clearer if Part 3 was split between the requirements which affect the SPR NSIP and the requirements which relate to the National Grid NSIP	tbd

	<p>It is unclear whether the requirements insofar as they relate to the development onshore need to be met in respect of the onshore preparation works - see comments above in respect of the definition of "commence".</p> <p>The content of the documents and plans etc which are to be approved under this part will have a significant impact on the parishes where the works are to take place. However there is no reference to the fact that the community is affected should be consulted. This also applies to amendments to such documents and plans</p>	<p>There should be an obligation to consult affected parishes.</p>
1	<p>The period of seven years within which to commence works is far too long particularly given SPR is reserving the right to build EA1N and EA2 consecutively. This is also relevant to cumulative impacts given that least six other projects may connect to the grid at Friston all of which will require additional works there.</p> <p>In addition the relationship between the EA1N DCO and the EA2 DCO needs to be clarified in respect of the National Grid NSIP. For example if a Scottish Power starts works under the EA1N DCO should that mean that Scottish Power's/National Grid's rights under the EA2 DCO are extinguished.</p>	<p>Period to be shortened to 3 years</p> <p>Relationship to other projects to be clarified</p>
11	<p>There is no reference to ancillary works in the works which require approval by the planning authority.</p>	<p>To extent that ancillary works remain in the DCO (see above) they should also be referred to in this paragraph.</p>
12(1) & (2)	<p>Only the "layout, scale and external appearance" of the onshore substation have been referred to. However there is a need to ensure that the onshore substation is engineered as efficiently as possible to reduce its size and scale.</p>	<p>Tbd - see Written Representations concerning the Rochdale Envelope/Design.</p> <p>Therefore the language in this paragraph needs to be amended so it is clear that SPR is required to ensure that the engineering design is as efficient as possible (including in respect of size and noise) and evidence should be produced to the satisfaction of the local planning authority to confirm this e.g. the report of an independent consulting engineer.</p>
12(3)	<p>These are in effect the Rochdale Envelope limits for the onshore substation. No justification has been given for these parameters. How can the examining authorities and the local planning authority judge whether from electrical engineering perspective or otherwise whether these parameters are excessive or not.</p>	<p>Tbd - see Written Representations on the Rochdale Envelope/Design.</p> <p>The language in this paragraph needs to be amended so it is clear that National Grid is required to ensure that the engineering design is as efficient</p>

		as possible (including in respect of size and low levels of noise) and evidence to be should be produced to the satisfaction of the local planning authority to confirm this e.g. the report of an independent consulting engineer.
12(4)	finished ground level is not defined	Finished ground levels must be specified for all the onshore substations, being the same finished ground levels as used for the preparation of visualisations, flood risk assessment etc
12(6) to 12(12)	Paragraphs 12(6) to 12(12) would appear to relate to the National Grid NSIP only	This should be clarified and it will be easier if the Requirements in relation to the National Grid NSIP are put into a separate Part of the Schedule. This will aid clarity when the parts of the DCO which relate to the National Grid works are transferred to National Grid.
12(6)	This paragraph only refers to work no. 41 which is the national grid substation. However there are substantial National Grid works (see definition of grid connection works) in addition to the substation, namely three cable sealing end compounds (work number 38), the overhead line pylons realignment work (work number 39), temporary pylons realignment works (work number 40) etc.	The reference to the national grid substation should be changed to the grid connection works
12(6)	<p>Only the “layout, scale and external appearance” of the national grid substation has been referred to. This needs to be extended to all the grid connection works, cable sealing ends etc. There does not appear to be any equivalent to paragraph 12(2) namely that the grid connection works are subject to design principles as is the onshore substation.</p> <p>There is a need to ensure that they are engineered as efficiently as possible to reduce their size and scale.</p>	<p>Tbd - see Written Representations concerning the Rochdale Envelope/Design. The outline design principle statement needs to be extended to the grid connection works</p> <p>The language in this paragraph needs to be amended so it is clear that National Grid is required to ensure that the engineering design is as efficient as possible (including in respect of size and low levels of noise) and evidence to be should be produced to the satisfaction of the local planning authority to confirm this e.g. the report of an independent consulting engineer.</p>

12(7), (8), (9), (10), (11) and 912)	These are in effect the Rochdale Envelope limits For the grid connection works. No justification has been given for these limits and the local planning authority does not have the expertise to judge whether from electrical engineering perspective these limits are excessive or not.	Tbd - see Written Representations concerning the Rochdale Envelope/Design. The language in this paragraph needs to be amended so it is clear that National Grid is required to ensure that the engineering design is as efficient as possible (including in respect of size and low levels of noise) and evidence to be should be produced to the satisfaction of the local planning authority to confirm this e.g. the report of an independent consulting engineer.
12(8)	The expression “electrical equipment” is too generic given the height of this equipment could be 16 m high.	The types of electrical equipment is to be specified to provide an indication of its scale and appearance.
12(9)	The size of the fenced compound area only relates to the substation not the other elements of the grid connection works	
12(10)	There is no description/definition of a cable sealing end compound	Definition of cable sealing end compound to be inserted so that the nature of this structure is known.
12(12)	It is unclear whether this is higher or lower than the existing pylons	A statement that this is the same height or lower than the existing pylons should be inserted.
12(10), (11) and (12)	Further other than for the national grid substation no area is specified for the remainder of the grid connection works	An area limit should be specified as it is for the national grid substation
12(13)	It is unclear whether these are the only construction consolidation sites or other working areas which will be necessary for the project. For example the working area referred to in work number 43 is not listed	It should be confirmed that this list of construction consolidation sites comprises all the construction working areas which will be required for the project and that there will be no others
12(13)	No. justification is given for the size of these construction consolidation sites. In total they add up to 84,070 m ² . This is 20 acres of land which will be disfigured for years.	An independent report should be provided that these sizes are reasonable
12(14)	No justification is given for the working widths required for the cable route. This is generally 32 m but could be up to 90m again given the sensitive landscapes over which the cable route will be traversing including the AONB this is unsatisfactory. It should be noted that the working with at landfall could be 90 m wide. In addition it should be remembered this is simply for one project	An independent report should be provided that these widths are reasonable

	and therefore the cumulative impact with EA2 should be considered. For example the working width for the landfall could be almost 400m wide in an AONB	
12(15)	No justification is given as to whether It is acceptable for a jointing bay to be 55 m from an individual's home, not least given the likely construction impacts and future maintenance	An independent report should be provided that an individual's home will not be impacted by a jointing bay being this close
12 omission – work no. 34	There do not seem to be any requirements in respect of work no. 34, the permanent access road. Its length is not described nor its width nor any land required either side of the road for drainage, fencing etc. This road was originally described by a SPR as an operational access road and other than its use for the delivery of four abnormal indivisible loads would only be used post construction for operation and maintenance. This comment also applies to the extension of this road as referred to in the last line of work number 38	A paragraph should be inserted setting out the requirements, including limitations on its use, for this operational access road including its extension. It should be clarified whether these extensions are just for the Scottish power works or are necessary to serve the other projects which will connect to the National Grid connection hub
omission meaning of "stage"	The word stage is used in numerous places in Part 3 in the context of stage of various works.	"stage" to be defined
14	Given that a SPR considers that the landscape mitigation will be complete in terms of growth etc after 15 years (this is disputed) there needs to be a requirement that the maintenance and management of the landscape works will be such so that this objective can be achieved	Wording should be inserted to ensure that the maintenance and management the landscaping works will result in the mitigation being complete after 15 years and the undertaker will retain direct responsibility for this
14	As stated there are two NSIPs which in time will be transferred to at least two separate entities/undertakers. It is unclear how the landscape requirements will apply to both NSIPs and which undertaker has responsibility for complying with them. For example which undertaker is responsible for the ongoing maintenance and management of the landscaping works and the SuDS?	The issue of which undertaker is responsible for the landscape mitigation and SuDs and their maintenance needs to be clarified alternatively all undertakers can have joint and several liability
15(1)	It is not clear what "relevant recommendations of appropriate British standards "are	Given the importance of the landscape mitigation works these recommendations should be specified
15(1)	The time periods of five years and ten years for the re-planting of trees and shrubs seems arbitrary. The reason for planting trees and shrubs is an attempt to mitigate the landscape damage caused by the SPR works and the National Grid works. Accordingly the time period should be for so long as the buildings and structures resulting from the work impact on the landscape.	All woodland requires management the relevant undertaker should be under a continuing obligation to manage the mitigation woodland et cetera to ensure that is effective for as long as the buildings and other structures exist. It is worth noting that maintenance of fencing is required for the operational lifetime of the onshore substation – see paragraph 17(4).

17	Fencing will be a highly visible feature of the NSIPs yet there does not seem to be any statement as to the aesthetic quality of either the permanent or temporary fencing. This is a rural landscape therefore any fencing (including gates and signage) should be as least "industrial" as possible	A requirement should be inserted as to the high aesthetic quality of fencing which is required
17(4)	This paragraph is only stated to apply to the onshore substation not the grid connection works, nor is it clear whether there will be fencing in relation to the permanent operational access road.	The requirements set out in this paragraph should be applied in the same manner to the grid connection works (excluding pylons) and the position in relation to the permanent operational access road clarified
22	The fact that this paragraph does not apply to pre-construction demolition and site clearance works (given the use of the defined word "commence") demonstrates again why the definition of onshore preparation works is too wide.	
22	The onshore works are being largely conducted in tranquil rural areas close to people's homes impacting their daily lives. Further most of the construction works are taking place next to a quiet rural village. This should be recognised in this paragraph.	At the end of paragraph 22 (one) statement to the following effect should be inserted "the code of construction practice must reflect the fact that construction works are being conducted in a tranquil rural environment, close to rural communities with a number of vulnerable residents and all steps should be taken to minimise their impact on tranquillity, communities and vulnerable residents"
23, 24	It would appear that these two paragraphs are identical (paragraphs 23 and 24 (a) and (c) aside) and these comments apply to both. Friston is a quiet and tranquil rural community as is most of the cable route with many retired and elderly people. Accordingly hours which might be considered acceptable in an environment where many of the local population go out to work are not automatically appropriate in this area.	There should be no weekend working as a matter of course. Part of the issue here is not only the noise and disturbance caused by the works themselves but by workers travelling to and from the site. Construction hours should be 08:00 to 16:00 excluding weekends and bank holidays.
23, 24 (2)	This sub paragraph permits 24 hour, seven day a week working. It is unclear what "essential" means and who determines when work is essential. Clearly SPR or National Grid (or rather their contractors who will be subject to liquidated damages in the event of delay) will always think what they want to do is essential whether or not it is. Further works may become essential because of mismanagement of the construction work.	There needs to be an <u>objective</u> test of when works can be carried out outside of normal working hours. An approach might be to state such works can only be carried out where the works are of a <u>type</u> that cannot be carried out during normal working hours. This will stop out of hours working due to

	<p>The local community should not be suffering additional disruption simply because the contractors may have to pay liquidated damages or the construction works have been mismanaged. There needs to be a different way of objectively determining the circumstances in which works are so critical or unique that they have to be performed outside of normal working hours. The circumstances listed in sub paragraphs (a) to (e) (which is not an exclusive list) could not all be regarded as essential. For example works should not be started unless they can be completed during normal working hours.</p> <p>It is doubtful whether all of the items listed these subparagraphs could be regarded as essential. In relation to subparagraph (2)(b) no reason is given as to why these fitting out works cannot be conducted during normal working hours. In relation to subparagraph (2)(c) our understanding is that there are only two abnormal loads. In relation to subparagraph (2)(d) again it is unclear why this work cannot happen during normal working hours. In relation to subparagraph (2)(e) clearly if there is an emergency then works can be carried out regardless of the time of day provided the reasons for the emergency are disclosed subsequently.</p>	<p>delay/mismanagement to the project. It is understood there are only two abnormal indivisible loads for each onshore substation being the supergrid transformers needed for the substation. Accordingly the number of such deliveries should be specified as no more than two.</p> <p>In circumstances where it is permissible to carry out work outside normal working hours reasonable notice should be given to both the local planning authority and the community. This notice should set out the type of works being carried out, why they cannot be carried out during normal working hours and how long the works will take.</p> <p>If work is required outside normal working hours then if at all possible it should be limited to Saturdays.</p> <p>Sundays and bank holidays should only be used for working in the most exceptional of circumstances.</p> <p>In the case of an emergency details of the emergency should be disclosed to the local planning authority and the affected Parish Council within 7 days of the emergency arising.</p>
25(1) & (3)	<p>This only requires an artificial light emissions management plan to be approved prior to <u>operation</u>. Given that the installation of lighting will be part of the construction works it would be more appropriate for this plan to be agreed part of the design process prior to commencement of the relevant works as at that point changes can be made to mitigate light pollution.</p> <p>Light pollution is also an ecological concern so it would seem to be illogical to be agreeing and approving an ecological management plan unless there was an understanding of the management of light pollution.</p> <p>This plan needs to cover all elements of the development at Friston not just the onshore substation and the national grid substation.</p>	<p>The operational artificial light emissions management plan should be agreed as part of the design process prior to commencement of the relevant works. The relevant works may not be simply work no.30, the onshore substation, and work number 41 the National Grid substation, unless these are the only works which will require artificial lighting. For example will the cable sealing ends require artificial lighting? All the grid connection works should be subject to the management plan. Also in this plan it needs to be recognised that there is a relationship with ecological mitigation given the impact artificial light on wildlife.</p>

25(2) and (4)	The limitation of compliance with the management plan and its maintenance to the <u>operation</u> of the onshore substation and the national grid substation may not cover the entire period in which the lighting is use. This plan and its maintenance must be implemented and acted upon for as long as the substations and other grid connection works sit in the landscape whether they are operating or not.	The management plan must be in place for as long as there is artificial lighting at the substation site. Further once the onshore substation and the grid connection works cease to be operational there should be no artificial lighting.
Omission - operational flood risk	There does not appear to be any requirement in respect of managing flood risk (other than during construction - see code of construction practice paragraph 22(2)(b) and the implementation and maintenance of flood risk measures/mitigation. This is unacceptable as there is a serious flood risk. See Written Representations concerning Flood Risk.	Given the serious flood risk at this site there must be a requirement requiring a plan/strategy to mitigate flood risk permanently whether or not to the onshore substation or grid connection works are operational. A detailed flood risk mitigation strategy must be prepared and be a certified document pursuant to section 36.
26 & 27	The content of the environmental statement relating to operational noise is severely defective - see Written Representations concerning Noise. Accordingly these paragraphs of the DCO are wholly inadequate and fail to address the reality of all the noise impacts at the site, including without limitation all noise impacts at Friston arising from the authorised project not just those from the onshore substation. There needs to be a robust and overarching strategy to address the operational impact of noise throughout the lifetime of the authorised project. This needs to be agreed as part of the design of the onshore substations and grid connection works and by reference to the detailed design to ensure that is what is constructed will meet the requirements in respect of noise. This should also be independently verified as should all subsequent monitoring.	tbd
28	As noted above onshore works should include onshore preparation works	
29	12 months should be the maximum period. There should also be consultation with the landowner not just the local planning authority	12 months should be expressed to be the maximum period and there should be no ability to agree a longer period. The landowner should not have the ability to prevent reinstatement.
30	There is no reference to any standards to which the decommissioning should meet. For example is the landscape to be restored to the condition in which it was in prior to the construction works?	tbd
31	It should be clarified that no such aviation lighting will be required onshore	
32	Given the serious loss of amenity (particularly at Friston) resulting from closures and diversions to public rights of way, the strategy should be agreed for the entirety of the onshore works before such works commence.	Paragraph 32 to be amended so that the public rights of way strategy is approved prior to commencement of any works related to the authorised project

33	This plan should take into account the proximity of Sizewell A and Sizewell B nuclear power stations	tbd
37	Given the possible rate of coastal erosion, the 24/25 year period is far too long.	These reports should be prepared every five years
38	<p>As noted above, this paragraph relates to the issue that the National Grid connection hub, which is designed to support at least two substations, is consented four times as result of there being a separate DCO for each of EA1N and EA2 and because it is included in both the Scottish Power NSIP and the National Grid NSIP.</p> <p>First the DCO needs to contain provisions whereby the size of the National Grid connection hub is reduced in size if only one of EA1N and EA2 is constructed.</p> <p>Second the wording proposed is far too vague. A decision should be made as to whether the National Grid connection hub is being constructed under the EA1N DCO or the EA2 DCO. It is highly unsatisfactory if some unspecified parts are built under one DCO and other unspecified parts are built under the other DCO.</p> <p>No doubt the rights under the DCO in respect of the National Grid connection hub will be transferred to and exercised by National Grid and in terms enforcement there needs to be clarity as to under which DCO National Grid has built its connection hub.</p>	
39	<p>In addition to the requirement for written approval the following matters must be addressed.</p> <p>First any approval and any documents, plans et cetera submitted for approval must be in accordance with the principles and assessments set out in the Environmental Statement.</p> <p>Second any approval by the relevant planning authority shall only be valid if there has been consultation with the Parish Councils affected by the subject matter of the approvals.</p>	tbd

THE PROBLEMS WITH ARBITRATION

No reason is given for the use of arbitration as a dispute resolution mechanism in the DCO. The Explanatory Memorandum simply states that the “concept is derived from the Model Provisions”. There are a number of issues with arbitration which make it inappropriate as a dispute resolution mechanism in the context of these DCOs.

1. **SECRECY** - In concept arbitration is a process whereby two private parties agree to have disputes between them determined in a private process by a decision maker (the arbitrator) of their choice. Whilst that might be appropriate in the context of a commercial contract between two commercial entities it would seem wholly inappropriate in the context of a project whose execution is a matter of public interest and where arbitration is imposed without the agreement of the parties which are to be subject to it. The secrecy of arbitration is particularly inappropriate in the context of issues which relate to the public interest. The secrecy is reinforced by paragraph 7 of Schedule 15 which states that the arbitration is to take place in private and all documents etc and the awards are to be confidential.

2. IMPARTIALITY AND INDEPENDENCE - Unlike the judiciary whose impartiality and independence can be assumed, this is not the case for arbitrators. The difficulty arises because someone who would be qualified, in terms of expertise and experience in these matters, as an arbitrator may be somebody who has acted as a professional advisor for Iberdrola, SPR or National Grid in the past, or may hope to do so in the future. Or he/she may be somebody who advises developers in the sector even if they have not advised Iberdrola, SPR or National Grid. It can be very difficult to find somebody to act as an arbitrator who is not only independent and impartial but who is perceived to be independent and impartial. Perception is very important as without a perception of independence and impartiality there will be No. faith in or acceptance of the arbitrator's award.
3. COSTS OF THE ARBITRATOR/ARBITRATION - Unlike the courts, in arbitration there are additional costs. You have to pay the cost of the arbitrator and for the location in which the arbitration takes place. This can add to costs rather than reduce them. Whilst this may be acceptable for a multibillion euro International energy company like Iberdrola and National Grid it would seem inappropriate where private individuals may be seeking to bring a claim for them to have to bear the cost of the dispute resolution process itself.
4. COSTS GENERALLY - if a dispute was to arise as to whether SPR or National Grid was complying with the terms of the likely parties will be the local planning authority or private individuals who are suffering the consequences of non-compliance with the DCO. There is a complete mismatch of resources between SPR I'm National Grid on the one hand (a multibillion companies) and local authorities. This mismatch is even more pronounced with private individuals. In such circumstances, which are far removed from the circumstances in which arbitration normally operates, the usual rules in relation to costs should reflect this imbalance. In such circumstances the provisions relating to costs in the DCO are onerous not least because the arbitration rules have largely removed the discretion of the arbitrator in relation to costs. Under paragraph 6 of Schedule 15 it is provided that the arbitrator "must" award recoverable costs. There is no consideration as to the ability of parties to bear those costs. Why is this important? The effects of these provisions on costs will have a disproportionate "chilling effect" on the ability of the community to challenge non-compliance by SPR and National Grid with the terms of the DCO. This means that the local community is left without an effective remedy to ensure that SPR and National Grid comply with the terms of the DCO.
5. DEALING WITH LITIGANTS IN PERSON – arbitration is usually a process between commercial organisations who will be represented by expert advisers both legal and technical. Members of the community will not generally have the resources to employ such people and therefore may well have to appear as "litigants in person". The judiciary has experience of dealing with unrepresented individuals in legal proceedings and will make the necessary adjustments to ensure fairness. Arbitrators generally do not.

Accordingly for the reasons set out above arbitration as a means of dispute resolution would seem to be a particularly inappropriate and unfair dispute resolution mechanism and the courts of England and Wales should be the preferred means of resolving disputes unless the deficiencies of arbitration set out above can be addressed.