



**Application by East Anglia ONE North Ltd for East Anglia ONE North Offshore Wind Farm
Application by East Anglia TWO Ltd for East Anglia TWO Offshore Wind Farm**

The Examining Authorities’ Commentaries on the draft Development Consent Orders (dDCOs)

Issued on 12 February 2021

The following table sets out the Examining Authorities’ (ExAs’) commentaries on the draft Development Consent Orders (dDCOs) for both applications. It is based on the most recent tracked versions of the dDCOs available in the Examinations which are:

- Deadline 5: **East Anglia ONE North dDCO version 4** – tracked [[REP5-004](#)]; and
- Deadline 5: **East Anglia TWO dDCO version 4** – tracked [[REP5-004](#)]

This document is a parallel document applicable to both Examinations. Each individual matter, issue or question raised indicates the Examination(s) it is applicable to as follows.

- 1** A yellow icon with a black **1**: the matter, issue or question is applicable to the East Anglia ONE North Examination.
- 2** A blue icon with a white **2**: the matter, issue or question is applicable to the East Anglia TWO Examination.
- 1 2** Both icons: the matter, issue or question is applicable to both Examinations.

Column 2 of the table indicates which Interested Parties (IPs) and Other Persons each matter, issue or question is directed to. The ExAs would be grateful if all persons named could address / comment on the matters, issues or questions directed to them, providing a substantive response, or indicating that the matter is not considered to be relevant to them for a reason. This does not prevent an answer being provided on a matter, issue or question by a person to whom it is not directed, should it be relevant to their interests.

Each matter, issue or question has a reference to the relevant draft provision in one or both version 4 tracked dDCOs [REP5-004]. When you are answering a question, please start your answer by quoting the provision reference (eg ‘Art 4(2)’ – for *Article 4(2) Power to maintain the authorised project*, or ‘Sch 10 Pt 1 para 1’ for the *first paragraph in Part 1 of Schedule 10, Protection for electricity, gas, water and sewerage undertakers*). If you need to distinguish your response as applying only to

East Anglia ONE North you can add **(1)** to the end of the reference (eg 'Art 4(1) **(1)**') and if you need to distinguish your response as applying only to East Anglia TWO you can add **(2)** to your reference on the same basis.

If your responses contain material that relates to both Examinations, you should copy them to both Examination mailboxes, as a copy will be published in both Examination Libraries. If your responses uniquely relate to one of the two Examinations, send your response to the mailbox for that individual Examination.

If you are responding on a small number of matters, answers in an email or a letter will suffice. If you are responding more broadly, it will assist the ExAs if you use a table based on this one to set out your responses. An editable version of this table in Microsoft Word is available on request from the Case Teams. Please contact the following email addresses and include 'East Anglia OWFs dDCOs Commentaries' in the subject line of your email:

EastAngliaOneNorth@planninginspectorate.gov.uk and/ or
EastAngliaTwo@planninginspectorate.gov.uk.

Responses are generally due by **Deadline 6 in both Examinations: 24 February 2021** although some matters set out different arrangements over a later or more than one deadline.

Interpretation and Abbreviations used

The following abbreviations relevant to statutory drafting are used:

Art	Article – a numbered provision in the body of the dDCO
dDCO	draft development consent order
made DCO	a development consent order for another development as made by the relevant Secretary of State and in force
DML	Deemed Marine Licence under the Marine and Coastal Access Act 2009 ('the 2009 Act'), found in these dDCOs as Schs and 14
Sch	Schedule – a numbered provision for a specific technical purpose which may also contain:
Para	Paragraphs – containing the main provisions (but see also Requirements)
Pt	Part – a main part of a schedule, typically subdivided into paragraphs or requirements
R	Requirements – in Sch 1 Pt 3 – which set out
SoS	the Secretary of State for Business, Energy and Industrial Strategy. A reference to SoS with further designatory letters is to the SoS for another department.

Other terms used:

NSIP Nationally Significant Infrastructure Project

Other terms are used as found in the draft dDCOs and can be interpreted with reference as necessary to Arts 2 (Interpretation) in both dDCOs. Legislation is given its full title unless already defined in Arts 2(1) of the dDCOs, in which case it is referred to using the abbreviated form in the drafts: for example “the 2008 Act” means the Planning Act 2008, and “the 2009 Act” means the Marine and Coastal Access Act 2009.

The Examination Libraries

References in these questions set out in square brackets (eg [APP-010]) are to documents catalogued in the Examination Libraries. The Libraries have been catalogued so that documents that parallel documents in the Examination Libraries for East Anglia ONE North and East Anglia TWO both share the same reference number. Where a document is unique to one Examination, the reference number will only be used in that Examination Library. The same number in the other Examination Library will be marked as ‘reference not in use’. The Examination Libraries can be obtained from the following links:

- East Anglia ONE North
<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010077/EN010077-001607EA1N%20Examination%20Library%20PDF%20Version.pdf>
- East Anglia TWO
<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010078/EN010078-001676East%20Anglia%20Two%20Examination%20Library.pdf>

The Examination Libraries are updated as the examinations progress.

Citation

Matters, issues or questions in this table should be cited referencing the ‘ExA’s dDCO Commentaries’ and then the specific draft statutory provision referred to and, if they apply to East Anglia ONE North alone, with the suffix **(1)** or to East Anglia TWO alone, with the suffix **(2)** applied.

Relationship to Issue Specific Hearings on the dDCOs

Matters, issues and questions identified in this document may be raised as part of relevant agenda items in DCO Issue Specific Hearings (dDCO ISHs). The purpose of their being raised here is to secure in principle responses in writing by named individual parties at Deadline 6, whereas the purpose of their discussion in a dDCO ISH is to explore the possible interaction between the positions of multiple parties on the same point. If needs be, response to this document may cross-refer to written statements of oral case submitted at a relevant deadline after a dDCO ISH, or vice versa.

Relationship to the ExAs' Second Written Questions - ExQs2

There are common topics addressed between these dDCO Commentaries and the ExQs2. In responding to the ExQs2 please focus on the relevant planning issues and provide your in-principle response. In responding to the matters, issues and questions in these commentaries, please focus on the way in which relevant provisions in the dDCOs might be drafted, bearing in mind that the ExAs' objective in publishing these commentaries is to ensure that it is able to frame the best available dDCOs. Responses to these commentaries will be taken as being expressed without prejudice to views expressed elsewhere (including in responses to ExQs2) about the planning merits of the proposed developments.

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dDCO Commentaries			
	For the attention of:	Matter, Issue or Question:	
	General observations		
None – missing provisions Both dDCOs	The Applicants	1	2 Adaptation Provisions <p>The ExAs have noted the potential relationship between the non-array elements of the proposed developments and policy change in relation to onshore transmission system connections, as indicated in Energy White Paper and subject to potential change in the BEIS Offshore Transmission Review. The Applicants have responded in summary terms indicating that they do not consider that the proposed development would be subject to any emerging policy change because the proposed developments are already at an advanced position in the approvals pipeline. They have outline that they consider they have prepared an economically efficient transmission system connection design that does not give rise to unacceptable adverse effects. They have made clear that they do not seek 'pathfinder' status under the Energy White Paper for their transmission system connections. They have sought to control risks associated with these policy changes by reducing the time allowable for commencement from seven to five years.</p> <p>That approach notwithstanding, taking an alternative approach without prejudice, how would the Applicants consider that the dDCOs might be amended to provide flexible adaptation to face policy change around transmission system connections, should the Secretary of State form the view that (at a relevant time) change policy around transmission system connections was applicable to the proposed developments and or that adaptation to support pathfinder status under the Energy White Paper was desirable?</p>

dDCO Commentaries	For the attention of:			Matter, Issue or Question:
				<p>This matter is raised generally and with no particular suggestion as to how such provisions might be drafted into the dDCOs. The elements that might need to be included however are:</p> <ul style="list-style-type: none"> • Provisions in relation to Compulsory Acquisition (CA) and/or Temporary Possession – which might enable change or fall-away if an alternative transmission connection method were to emerge. • Provisions in relation to Works, principally onshore but also in the offshore cable alignments – which might enable change.
Both dDCOs	The Applicants	1	2	<p>Review</p> <p>When the draft development consent order (dDCO) is finalised (ahead of submission at Deadline 7), all internal references, statutory citations and references and legal footnotes should be checked and updated as required. Drafting should be reviewed to follow best practice in Planning Inspectorate Advice Notes (ANs) 13 and 15 and (as relevant) guidance on statutory instrument drafting from the Office of the Parliamentary Counsel (June 2020).</p>
	The Applicants	1	2	<p>References to companies</p> <p>Where a company is referred to in the dDCOs, the name of the company should be the name as recorded in the Companies House register and should include the registered company number. Please review all references to companies and ensure that this is done.</p>
	The Applicants	1	2	<p>Use of 'and/or'</p> <p>There are multiple uses of and/or in drafting which is not considered to be appropriate for statutory instruments. Please find an alternative.</p>

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
Both Explanatory Memoranda	The Applicants	1	2 Final Explanatory Memoranda A thorough justification should be provided in Deadline 7 Explanatory Memoranda (EM) for every Article and Requirement in each dDCO, explaining why the inclusion of the power is appropriate in the specific case. The extent of justification should be proportionate to the degree of novelty and/ or controversy in relation to the inclusion of that particular power. Relevant reference should be made to equivalent provisions in made DCOs, recognising that the Infrastructure Planning (Model Provisions) Order (the MPO) is not a binding source and that the model provisions set out there are now old – practice has evolved.
	Contents		
Pages 1 - 3	The Applicants	1	2 Review The Applicants are requested to review the structure of both dDCOs ensuring that the numbering and titling of all provisions remains consistent and is reflected in the Table of Consents for each, throughout the Examinations.
	Preamble		
Pages 3 - 4	The Applicants	1	2 Special powers relating to Compulsory Acquisition (CA) Where special powers under Pt 7 Chapter 1 of the 2008 Act (specifically ss 131 and 132) need to be employed, their application is required to be endorsed on the face of the Orders – in the preamble. Please confirm that no such powers need to be added to the preambles.

dDCO Commentaries			
	For the attention of:	Matter, Issue or Question:	
	Articles		
Arts 2	The Applicants	1	2 Interpretation <i>Art 2(1) definitions: authorised development</i> The definition of 'authorised development' includes "any other development authorised by this Order...." The "authorised project" definition includes 'ancillary works' in addition to the 'authorised development'. The effects of this drafting can be argued to require an amendment to Schs 1 Pt 2 (see below) to provide that those provisions do not authorise works that constitute development for the purposes of s32 of the 2008 Act. Please respond.
Arts 2	The Applicants East Suffolk Council Suffolk County Council	1	2 <i>Art 2(1) definitions: commence</i> Definitions of "commence" on land are limited to the first carrying out of any material operation as defined in s 155 of the 2008 Act 'other than onshore preparation works'. As raised in ISHs6, "onshore preparation works" means operations consisting of site clearance, demolition work, pre-planting of landscaping works, archaeological investigations, environmental surveys, ecological mitigation, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of temporary means of enclosure, creation of site accesses, footpath creation, erection of welfare facilities and the temporary display of site notices or advertisements;...'

dDCO Commentaries				
For the attention of:	Matter, Issue or Question:			
				<p>This is a potentially wide class of exceptions to the limitation on commencement. It enables substantial pre-commencement works with relevant environment effects. Detailed plans and approvals pursuant to (for example) Rs 11 (Stages of authorised development onshore), 12 (Detailed design parameters onshore) or 13 (Landfall construction method statement) (or at least relevant parts of them) might be expected to secure aspects of the environmental performance of works including site clearances, demolitions, creation of accesses, remedial groundworks, any works relevant to flooding or drainage or pre-planting in landscape works.</p> <p>a) Is it necessary to further specify that relevant aspects of plans and approvals under requirements be completed before such pre-commencement works take place? How might that be done?</p> <p>b) Alternatively, can the definition of "<i>onshore preparation works</i>" be amended to provide that all such works must take place 'to the extent assessed in the ESs'?</p>
Arts 2	The Applicants East Suffolk Council Suffolk County Council The Marine Management Organisation	1	2	<p><i>Art 2(1) definitions: environmental statement</i> The "<i>environmental statement</i>" means the document certified as the environmental statement by the Secretary of State under article 36 (certification of plans etc.)'. There are many relevant documents with different dates and versions and further changes are likely before the end of the Examinations.</p> <p>a) The Applicants are requested to ensure that the list is accurately updated at all following deadlines.</p> <p>b) The ExAs note the proposal to implement a Schedule based on that used for the Boreas dDCO by Deadline 7- and this would provide a significant improvement.</p>

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
			See also Arts 36 (certification of plans etc.)
Arts 2	The Applicants East Suffolk Council Suffolk County Council The Marine Management Organisation	1	2 <i>Art 2(1) definitions: grid connection works and transmission works</i> Definitions of "grid connection works" and "transmission works" include 'any related associated development'. a) Are Schs 1 Pt 1 sufficiently clear about what the related associated development is?
Arts 2	All Interested Parties	1	2 <i>Art 2(1) definitions: maintain</i> This definition is wide, a matter raised at ISHs6, but is expressly limited 'to the extent assessed in the [ESs]'. Are parties now broadly content with this drafting?
Arts 2	All Interested Parties	1	2 <i>Art 2(1) definitions: relevant to onshore substation design</i> References to the "outline national grid substation design principles statement" and the "outline onshore substation design principles statement" have been removed at Deadline 5. Reference to the "substations design principles statement" which is also to be a certified document have been added. a) Are parties content that this change is appropriate and has been appropriately reflected elsewhere in the dDCOs?
Arts 2	The Applicants Any Statutory Undertaker IPs	1	2 <i>Art 2(1) definitions: statutory undertaker</i> In this definition, "'statutory undertaker" means any person falling within section 127(8) of the 2008 Act and a public communications provider as defined in section 151 of the 2003 Act...'.

dDCO Commentaries	For the attention of:			Matter, Issue or Question:
				<p>a) Given the different definitions of statutory undertakers as between s127 and s138 of the 2008 Act, does this definition sufficiently describe the classes of person intended to be defined as statutory undertakers for the purposes of these dDCOs?</p> <p>b) If not, the Applicants are requested to revise drafting.</p> <p>See also Arts 28.</p>
Arts 2	The Applicants	1	2	<p><i>Missing definition: begin</i> R16 (Highway accesses) refers to the construction of accesses which 'must not begin' until relevant details are submitted and approved?</p> <p>c) Is this drafting a conscious means of providing control over the start of an aspect of works enabled to start pre-commencement? (see definition of commence above)</p> <p>d) However, is there a need to define the term begin if its being used in this manner?</p>
Arts 2	The Applicants	1	2	<p><i>Missing definition: intrusive</i> The term 'intrusive' is used in drafting in the dDCOs in several provisions. It is not defined and so will take its common English / dictionary meaning. In cases of dispute, this might generate uncertainty. Should the term be defined?</p>
Arts 2	The Applicants R12Natural England	1	2	<p><i>Missing definition: SAC</i> The term 'SAC' is used in drafting in the dDCOs in several provisions. It is not defined. Should the term be defined?</p>

dDCO Commentaries	For the attention of:			Matter, Issue or Question:
Arts 2	The Applicants	1		<i>Missing definition: East Anglia TWO onshore substation</i> Does this term need to be defined for use in Art 7(1)(b)(i)?
Arts 2	The Applicants	1		<i>Missing definition: East Anglia TWO cable route</i> Does this term need to be defined for use in Sch 10 Pt 5 para 11?
Arts 2	The Applicants		2	<i>Missing definition: East Anglia ONE North onshore substation</i>
Arts 2	The Applicants		2	<i>Missing definition: East Anglia ONE North cable route</i> Does this term need to be defined for use in Sch 10 Pt 5 para 11?
Arts 3	The Applicants	1	2	Development consent etc. granted by the Order(s) In Arts 3(2) the term 'scheduled works' is not defined or described. a) Is it 'works comprising the authorised development in Schedule 1 Part 1? b) Is a drafting change required?
Arts 5	The Applicants Affected Persons	1	2	Benefit of the Order(s) A transfer of the benefit of the Order(s) from one to another undertaker generally requires the consent of the Secretary of State. Under Arts 5(7) it does not – if the transfer is to another Electricity Act 1989 licensed generating undertaker – and – any relevant financial claims arising from the compulsory acquisition or temporary possession provisions have been concluded. a) Is this drafting clear and appropriate?
Arts 6	The Applicants Affected Persons	1	2	Application and modification of legislative provisions Arts 6(2) disapply the temporary possession provisions of the Neighbourhood Planning Act 2017 (which have yet to be the subject of a commencement order). As raised in ISHS6, this provision has become

dDCO Commentaries	For the attention of:		Matter, Issue or Question:
			<p>widely included in recent made DCOs. However, the rationale for its inclusion in such DCOs included (inter alia) argument that projects that were designed and consulted upon before the Neighbourhood Planning Act 2017 received Royal Assent should not be constrained to deliver to additional timescales (and costs) around temporary possession processes that were not in the contemplation of the applicants and affected persons when project design and consultation took place. However, for projects such as these, that argument has less weight, as the Applicants and Affected Persons could have considered the potential effects of the Neighbourhood Planning Act 2017 from early in the design stage and made appropriate provision in delivery plans.</p> <p>The ExAs note the Applicants' positions and that the passage of time from Royal Assent for the Neighbourhood Planning Act 2017 without the commencement of these powers begins to raise the possibility that they might never be commenced.</p> <p>Is there any remaining argument against the disapplication of these powers?</p>
Arts 7	The Applicants Interested Parties Affected Persons	1	<p>2 Defence to proceedings in respect of statutory nuisance Existing concerns raised at ISHs6 are noted.</p> <p>a) Any outstanding concerns at the extent or effect of the proposed defence must be submitted by Deadline 6.</p> <p>b) Arts 7(1)(a)(i) refers to the Control of Pollution Act 1974. Are relevant provisions of this legislation still on the statute book? Section 65 is understood to have been repealed?</p>

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
			c) Arts 7(1)(b) (i) in (1) refers to the onshore substation of the project proposed to be authorised by the other dDCO (2) – and vice versa. Do the substations referred to here need to be defined? d) Is any changed drafting necessary?
Arts 16	The Applicants The Environment Agency Suffolk County Council	1	2 Discharge of water Are the Environment Agency and Suffolk County Council as lead local flood authority content with this provision as drafted? If so, can this be added to the Explanatory Memoranda?
Arts 17	The Applicants East Suffolk Council Suffolk County Council	1	2 Authority to survey and investigate the land onshore In relation to this provision: a) Is it sufficiently clear in para (1) that the undertaker must remove any equipment etc brought onto land once the survey or investigation is completed? b) Are the Councils content with the deemed consent provision and timing under para (6)?
Arts 20	The Applicants Affected Persons	1	2 Compulsory acquisition of rights Please address the following matter: a) Does para 20(1) need to be made subject to Schs 7 in the same manner as para 20(2) has been?
Arts 21	The Applicants Affected Persons	1	2 Private rights This provides that “ <i>all private rights or restrictive covenants over land subject to compulsory acquisition under article 18 (compulsory acquisition of land) cease to have effect in so far as their continuance</i>

dDCO Commentaries	For the attention of:			Matter, Issue or Question:
				<p><i>would be inconsistent with the exercise of the powers under article 18 (compulsory acquisition of land)..."</i></p> <p>a) Do the Applicants intend to suspend, over-ride or extinguish such rights?</p> <p>b) The distinctions and their justifications are potentially important, as are their implications for Affected Persons. An explanation should make this clear.</p>
Arts 22 & 23	The Applicants	1	2	<p>Application of the Compulsory Purchase (Vesting Declarations) Act 1981</p> <p>Application of Part 1 of the Compulsory Purchase Act 1965</p> <p>There has been no recent change to this drafting.</p> <p>a) The Applicants are asked to confirm that it remains abreast of recent legislative changes relevant to compulsory acquisition.</p>
Arts 24	The Applicants Affected Persons	1	2	<p>Acquisition of subsoil or airspace only</p> <p>As currently drafted, this provision enables the acquisition of (relevant parts of) land and rights. It is drafted as being applicable to the land referred to in Arts 20 (compulsory acquisition of rights), where, by definition, only rights are empowered to be acquired.</p> <p>a) Is there a drafting conflict here? Do Arts 24 empower the acquisition of more (i.e. land and rights) than is intended in relation to land subject to Arts 20 (rights alone)?</p> <p>b) If so, the Applicants are requested to amend the drafting to ensure that an effect amounting to the taking of land on Arts 20 land is not provided for.</p>

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
			c) Alternatively, the Applicants are requested to explain why such a change is not required.
Arts 26 & 27	The Applicants Affected Persons	1	2 Temporary uses of land: notice periods for entry In Arts 26 (applicable during construction) the notice period for entry to land is 'not less than 14 days'. In Arts 27 (applicable during operation for maintenance works) the notice period is 'not less than 28 days'. a) The Applicants are requested to explain and justify the difference in notice provided. b) 14 days is in principle a very short period of notice of intended entry onto land. Given that 28 days can be accommodated for maintenance works, why can the same period not be provided for construction works? c) In Arts 27(11) (b) the Applicants are requested to check and confirm that the cross reference to Arts 26(3) is now the correct reference.
Arts 28	The Applicants Any Statutory Undertakers	1	2 Statutory undertakers See Arts 2(1) (definitions of "statutory undertaker"). a) Is it clear to whom these provisions are intended to apply?
Arts 33	The Applicants East Suffolk Council		Operational land for purposes of the 1990 Act Would the Applicants agree to prepare and submit an Operational Land Plan for each dDCO, specifically defining the land deemed to be operational land and to be a certified document? This would show the extent of operational land, limited to that reasonably required for operational (as distinct from construction) purposes.

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
			<p>a) Is it possible and appropriate to submit that plan during the Examinations?</p> <p>b) If not, how would its submission be secured and by whom should it be approved?</p>
Arts 34	East Suffolk Council Suffolk County Council	1	<p>2 Felling or lopping of trees and removal of hedgerows the Planning Inspectorate's Advice Note (AN) 15 proposes that all affected hedgerows should be identified in a schedule and on a plan.</p> <p>a) In these dDCOs, only the 'important hedgerows' have been identified in the Schedules.</p> <p>b) East Suffolk Council's concerns on this matter [REP5-047] are noted. Do they suggest any changes to the drafting of the Article?</p> <p>c) Are other bodies content that this provision is adequate?</p> <p>See also Schs 11.</p>
Arts 35	East Suffolk Council	1	<p>2 Trees subject to tree preservation orders These articles are applicable to and empower extensive works to trees protected after the conclusion of the design process. However, the proposed cut-off date of 25 June 2019 is now some time into the past.</p> <p>a) Is the Council aware of any more recently protected trees in respect of which the powers provided here would not be appropriate and for which a reasonable design accommodation might be expected?</p>
Arts 36	The Applicants East Suffolk Council Suffolk County Council	1	<p>2 Certification of plans etc. These articles contain an extensive list (to para (a) to para (gg) of documents and their versions.</p>

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
	The Marine Management Organisation		<p>a) The Applicants are requested to ensure that this list remains up to date as the Examinations progress.</p> <p>b) Are any documents missing?</p> <p>c) A number of made DCOs have substituted this approach for a succinctly drafted Article stating that the documents listed in a Schedule must be submitted to the SoS for certification and it was recently used in the Boreas dDCO. This approach enables the documents to be tabulated and for them and their version numbers to be identified with greater ease. The Applicants have committed to taking this approach by Deadline 7 and this will make a significant improvement.</p> <p>See also Schedules – missing provision?</p>
Arts 37	The Applicants East Suffolk Council Suffolk County Council The Marine Management Organisation The Maritime and Coastguard Agency Trinity House Natural England Historic England The Environment Agency Interested Parties / Affected Persons with	1	<p>2</p> <p>Arbitration</p> <p>Arts 37 of the dDCOs are expressed (Arts 37(1) as subject to Art 40 (saving provision for Trinity House) and to the provision that the arbitration provisions do not apply to <i>'any dispute or difference arising out of or in connection with any provision of this Order, unless otherwise provided for...'</i>. Arts 37(2) provide that <i>'[a]ny matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration'</i>.</p> <p>a) Is it sufficiently clear that the discharge of Requirements in Schedule 1 and as provided for in Schs 16 and/ or of Conditions to the DMLs in Schedules 13 or 14 are outside the scope of the arbitration provision?</p> <p>b) Is the Applicants' intention as described in (a) and if not, what is the intended application of arbitration to the discharge of Requirements,</p>

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
	an interest in arbitration		<p>the operation of Schs 16 and/ or the discharge of Conditions to the DMLs?</p> <p>c) Is the MMO content that the exception from arbitration provided for it is appropriate and addresses its concerns?</p> <p>d) Is Trinity House content with the proposed saving provision in Arts 40 and that has the effect of excepting it from the arbitration provisions?</p> <p>e) Are local authorities acting as relevant planning authority or highway authority and in related capacities content that the arbitration provisions do not intrude on their powers and duties in any unexpected or unwarranted manner?</p> <p>f) Are the Environment Agency, Natural England and/ or Historic England content that their roles as advisory and regulatory authorities, as consultees and in the making of relevant expert determinations and authorisations where necessary appropriately responded to in this drafting?</p> <p>g) Is it sufficiently clear that the SoS' own determinations are not subject to arbitration?</p> <p>See also – Schs 15.</p>
Arts 38	East Suffolk Council Suffolk County Council Environment Agency Historic England Natural England Ministry of Defence Civil Aviation Authority	1	2 Bodies discharging requirements Bodies acting under Arts 38 of the dDCOs and discharging or directing under Requirements including: <ul style="list-style-type: none"> • The relevant planning authority; • The relevant highway authority; • Environment Agency; • Historic England; • Natural England; • Civil Aviation Authority;

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
	NATS		<ul style="list-style-type: none"> • Ministry of Defence • NATS • Suffolk County Council (as lead local flood authority); <p>Are requested to confirm that they are content with the application of Arts 38 and Schs 16.</p> <p>See also – Schs 16.</p>
Arts 41	The Crown Estate	1	<p>2 Crown rights</p> <p>Is the Crown Estate satisfied that the drafting of this provision is appropriate?</p>
None – missing provision	The Applicants Affected Persons	1	<p>2 Protective works</p> <p>Earlier drafts of the dDCOs contained an article empowering protective works to buildings. This has been deleted.</p> <p>a) Do any Affected Persons (including additional Affected Persons in relation to the additional land request made at Deadline 1 [REP1-037]) consider that protective works may be required?</p> <p>b) Are the Applicants clear that the applications as amended still do not give rise to any reasonable requirement for the provision and exercise of such a power?</p>

dDCO Commentaries		For the attention of:	Matter, Issue or Question:
	SCHEDULE 1 – Authorised project		
From Pages 30 Pt 1	The Applicants	1 2	<p>Pt 1: Authorised development Para 1 – the generating stations NSIPs <i>Works Nos.1</i> secure the status of the authorised developments as NSIPs by providing that the works consist of an offshore wind turbine generating station with a gross electrical output capacity of over 100 MW. They provide for East Anglia ONE North (1) up to 67 wind turbine generators may be constructed and for East Anglia TWO (2) up to 75 wind turbine generators may be constructed. These provisions secure the maximum physical extent of the generating station array developments at sea and describe the upper limit of the Rochdale Envelopes for the proposed developments.</p> <p>The Applicants have been clear (ISHs6) that they do not consider it necessary or precedented in previous made DCOs for there to be additional Works descriptions that secure the development of installed generating capacity over 100 MW.</p> <p>However, to the extent that some Interested Parties have made submissions that in their views, the adverse impacts of the proposed developments could outweigh their benefits, it could be argued that larger installed generating capacities may form a relevant component of greater public benefits. Reference has also been made to the material change process for the East Anglia ONE offshore wind farm post the initial grant of development consent for that project, which has been argued to have resulted in the assessed adverse impact of that development in terms of onshore effects becoming greater (in proportion to a reduced installed generating capacity benefit) than they were at the point of original decision on the DCO. In such</p>

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
			<p>circumstances, arguments have been mounted that there may be a threshold for minimum installed generating capacities that might be necessary to be secured in these proposed developments to ensure that a positive balance of benefit could be retained.</p> <p>a) Is it the Applicants' view that the construction of either proposed development at a minimum installed capacity of 101 MW would provide sufficient benefits to outweigh their relevant adverse impacts?</p> <p>b) If there is doubt on this point, please propose drafting which might secure an appropriate threshold of installed generating capacity to address this.</p> <p>c) Are there provisions in the Agreements for Lease (Afls) for the offshore array areas that secure minimum installed generating capacities? If so, could the equivalent figure be referred to in the dDCOs?</p>
Pt 1	The Applicants, the Marine Management Organisation, Suffolk County Council, East Suffolk Council	1	<p>2</p> <p>Para 1 – the generating stations NSIPs</p> <p>The maximum height of <i>Works Nos. 1</i> (the offshore generating stations) <i>2 and 3</i> (offshore platforms) are not secured here, although it these values have been assessed in the ESs for SLVIA purposes. It would not be normal for them to be secured here, but neither are they secured in the DMLs (see Schs 13 generation assets).</p> <p>a) Is security already provided by another means (if so, please explain and if not please provide a view as to whether it is required);</p> <p>b) If additional drafting is required to address this point, please submit it.</p>

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
Pt 1	The Applicants	1	2 Para 1 – the landfall In <i>Works Nos. 8</i> , is it the case that all the intended works are 'onshore' (eg landward of MHWS)?
Pt 1	The Applicants The Environment Agency Suffolk County Council	1	2 Para 1 – landscape and drainage works <i>Works Nos. 33</i> refer to 'landscaping works including bunding and planting together with drainage works, sustainable drainage system ponds, surface water management systems, formation of footpaths and access...' Suffolk County Council have suggested subdividing this between a more closely defined set of landscape works and a separate set of surface water drainage infrastructure works. Does the Applicant agree and if not, why not?
Pt 1	The Applicants	1	2 Paras 1 & 2 – formation of a new permanent access road from the B1121 north of Kiln Lane to the onshore substation and national grid substation. <i>Works Nos. 34</i> forms part of both the generating stations and electric lines NSIPs. The rationale for this approach is clear. However, in relation to matters raised in respect of R38 (Restriction on carrying out grid connection works where consented in another order), there is an argument that drafting should be included to ensure that this access road cannot be constructed a second time if already constructed under one DCO. Is any additional drafting required?
Pt 1	The Applicants NG ET NG ESO NG Ventures East Suffolk Council	1	2 Para 2 – the electric lines (transmission) NSIP Is there an argument that the element of these developments relating to National Grid infrastructure is not only a separate NSIP but is potentially a separate project that should be the subject of a separate DCO? Such an approach might ensure that the effects of a range of

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
			potential grid connections were appropriately assessed and mitigations secured?
Pt 1	The Applicants NG ET NG ESO NG Ventures East Suffolk Council	1	2 Para 2 – the electric lines (transmission) NSIP In order to adequately ensure that relevant design mitigations for the transmission connections substations are provided and endure, permitted development rights applicable to a National Grid substation might be withdrawn: ExQs2.0.1 and 2 refer, as does East Suffolk Council D5 submission on ISHs6 [REP5-047]. a) How might that be provided for in drafting terms in the dDCOs? b) Is the drafting proposed by East Suffolk Council appropriate?
Pt 1	The Applicants	1	2 Para 2 – the electric lines (transmission) NSIPs – landscape and drainage and other shared works Works Nos. 34 (an access road) is shared between the generating stations (para 1) NSIPs and the electric lines (transmission) (para 2) NSIP. On the same principle are elements of other Works also shared and if so should relevant drafting provision be made? Works Nos. 33 appears to be of particular relevance as a candidate for inclusion as shared Works, as Works Nos. 38 (sealing end compounds), 41 (a new National Grid substation) and 34 itself (the access road) require to be landscaped and drained during the operation phase? a) Should there be other shared Works? b) How might these be provided for in drafting terms?

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
Pt 1	The Applicants, the Marine Management Organisation	1	2 Para 3 – grid coordinates for development seaward of MHWS Please audit the defined points describing the sites of the proposed developments at sea and confirm that the Latitudes and Longitudes in the tables are correct.
Pt 2	The Applicants	1	2 Pt 2: Ancillary works Is it necessary to provide in this part that it specifically does not authorise any works that constitute development for the purposes of s32 of the 2008 Act?
Pt 3 R1	The Applicants	1	2 Pt 3: Requirements R1: Time limits On application, the dDCOs provided as follows: <i>'The authorised project must commence no later than the expiration of seven years beginning with the date this Order comes into force.'</i> At ISH6 the Applicants submitted and at Deadline 5 the Applicants confirmed its intention to reduce this period to five years. The ExAs understand the justification in summary terms to be that (in the context provided by the Energy White Paper) the Applicants do not envisage requiring a period of seven years to bring these projects to commencement. Nevertheless, these are very large and complex projects and the application of a seven-year commencement has been proposed, justified and approved in made DCOs for equivalent and smaller projects. a) Are the Applicants clear that they will be able to commence within five as distinct from seven years? Please draw attention to risk analysis undertaken around this change. b) If commencement were to be delayed beyond five years, what would the implications be?

dDCO Commentaries	For the attention of:		Matter, Issue or Question:
			<p>c) Is there any basis for a suggestion that the reduction represents a means to reduce the possibility/ risk that the Applicants might experience pressures to adapt the onshore transmission connection method or route as part of emerging responses to policy or regulatory changes (BEIS Offshore Transmission Review and/or Energy White Paper)?</p> <p>d) If so, is there any merit in an alternative approach in which additional adaptation capacity is designed in to the onshore/ transmission connection provisions of the dDCOs?</p> <p>See also missing provisions – adaptation (above)</p>
Pt 3 R12	The Applicants	1 2	<p>R12: Detailed design parameters onshore Please comment on the following matters:</p> <p>a) The Applicants are asked to produce a form of drafting requiring the details of the layout, scale and external appearance of the onshore substations (for works relating to (1), (2) and the National Grid substation works) submitted to East Suffolk Council for approval to be in accordance with the Substations Design Principles Statement [REP4-029].</p> <p>b) The installation of cables comprised within <i>Works Nos.6</i> is subject to a provision that they must be installed using horizontal directional drilling. Should that provision refer to ‘cables and ducts’?</p> <p>c) Can greater clarity around the operation of this requirement be delivered through its subdivision into two or more requirements?</p>

dDCO Commentaries	For the attention of:		Matter, Issue or Question:
Pt 3 R13	The Applicants East Suffolk Council Natural England EDF Energy Nuclear Generation Ltd (Sizewell B)(SZB)	1 2	<p>R13: Landfall construction method statement Please address the following matters:</p> <ul style="list-style-type: none"> a) Para 2 requires the method statement to be 'implemented as approved', but no monitoring process is defined. Should there be a monitoring provision and if so, how could it be drafted? An indicative form of drafting is set out below. b) Which Works should be within scope? Are elements of Works Nos.5 relevant albeit that they are seaward of MHWS? c) Should Natural England be a consultee? d) EDF Energy Nuclear Generation Ltd (Sizewell B) (SZB) has requested to become a consultee on the landfall construction method statement submissions relating to Works Nos. 6. e) Is the Applicant content with these proposals and if not, why not? <ul style="list-style-type: none"> (1) No part of Works No. 6 or 8 may commence until a method statement for the construction of Works 6 or 8 has been submitted to and approved in writing by the relevant planning authority [in consultation with Natural England and EDF Energy {SZB}]. (2) The method statement referred to in paragraph (1) must include measures for long horizontal directional drilling below the beach and cliff base at the landfall as well as measures for ongoing inspection of Works No. 6 or 8 and reporting of results to the relevant planning authority during the operation of the authorised project. (3) In the event that inspections indicate that as a result of the rate and extent of landfall erosion Works No. 6 or 8 could become exposed during the operation of the authorised project the undertaker must, as soon as practicable, submit proposals in writing for remedial measures to protect Works No. 6 or 8, together with a timetable for their

dDCO Commentaries			
	For the attention of:	Matter, Issue or Question:	
			implementation, to the relevant planning authority for their approval, [in consultation with Natural England]. (4) The method statement and any proposals for remedial measures must be implemented as approved.
Pt 3 R14	The Applicants East Suffolk Council		R14: Provision of landscaping The proposal to undertake 'pre-planting' is potentially valuable as a form of mitigation, enabling the part establishment of some landscape enclosure before commencement. However, it also serves to reduce the level of accountability around the approval of landscape schemes. Is there a form of drafting that could enable reference of pre-commencement landscape works to the relevant planning authority and so address this concern?
Pt 3 R15	The Applicants East Suffolk Council		R15: Implementation and maintenance of landscaping How might drafting securing an aftercare/ replacement period for the landscaping for Works Nos. 33 in accordance with the time period for adaptive/dynamic maintenance and aftercare set out in the OLEMS [REP3-030, Section 4.2] be formed? How might this address the suspension of maintenance? Is a ten-year replacement period for failed woodland planting required for Works Nos. 24 and 29?
Pt 3 R16	The Applicants Suffolk County Council	1	R16: Highway accesses Please comment on the following matters: a) Why is the term 'begin' used in this provision and not the defined term 'commence'? (See Arts 2(1).)

dDCO Commentaries			
	For the attention of:	Matter, Issue or Question:	
			b) SZB has requested to become a consultee on highway access written details submissions relating to Works Nos. 10, 11 and 15. Is the Applicant content?
Pt 3 R17	The Applicants East Suffolk Council		R17: Fencing and other means of enclosure Similar issues arise to those in relation to R14. Is there a form of drafting that could enable reference of pre-commencement landscape works to the relevant planning authority and so address this concern?
Pt 3 R19	The Applicants Suffolk County Council		R19: Archaeology Suffolk County Council [REP5-053] has suggested the insertion of the words "and the outline written scheme of investigation (onshore)" into this requirement, prior to 'in respect of those works'. Is the Applicant content?
Pt 3 R21	The Applicants East Suffolk Council	1	2 R21: Ecological management plan Pre-construction surveys have been added to the first para of the requirement (at Deadline 5). They have not been added to the second para, which is what the ExAs had understood East Suffolk Council had requested. a) Would the Applicants be content to add a similar provision ('reflecting the <u>pre-construction</u> survey results') to para (2)?
Pt 3 R22	The Applicants East Suffolk Council SZB EDF (NNB Generation Co Ltd) (SZC)	1	2 R22: Code of construction practice Are there any parts or elements of the code of construction practice that should apply to pre-commencement works? If so, which works should they apply to and how can drafting require their preparation, submission, approval and application to these works?

dDCO Commentaries				Matter, Issue or Question:
	Sizewell A & B Sites Stakeholder Group			a) SZB has requested to become a consultee on the code of construction practice in respect of the Sizewell Gap construction method statement. Is the Applicant content? b) Should the same standing be accorded to bodies responsible for decommissioning and new nuclear development (SZC) at Sizewell?
Pt 3 Rs23 & 24	The Applicants East Suffolk Council Interested Parties	1	2	R23 & 24: Hours Please comment on the following matters: a) Is there any feasible means of limiting or controlling the classes of essential activities which (following discussion at ISHs6) remain as open classes? b) Does the Applicant have any further observations to make on proposals for further hours limitations raised by Interested Parties at ISHs6? Proposals made included reducing hours from 0700-1900 to potentially 0800-1800 (and 0800-1300 on Saturdays) and also to the possibility of tourism/ festival-related non-working period in the summer months.
Pt 3 R26	The Applicants East Suffolk Council NG ESO NG ET NG Ventures			R26: Control of Noise during Operational Phase R27: Control of noise during operational phase cumulatively with (1) and (2) The Applicants are requested to clarify whether drafting securing an additional monitoring location is proposed to be added to R26 [REP4-026][REP4-043], or whether the Deadline 5 changes are viewed as sufficient. East Suffolk Council has suggested a 'considerably lower' operational noise rating level (LAr) should be secured in both of these requirements [REP5-047]. What do they consider the value(s) should be and why?

dDCO Commentaries		For the attention of:		Matter, Issue or Question:
				Is it appropriate and if so, how might the National Grid infrastructure be included within the final agreed cumulative operational noise rating level in R27?
Pt 3 R28	The Applicants EDF Energy (SZB) (SZC) Sizewell A & B Sites Stakeholder Group	1	2	R28: Traffic SZB has requested to become a consultee on the construction traffic management plan in respect of Works Nos. 10, 11 and 15. Should the same standing be accorded to bodies responsible for decommissioning and for new nuclear development (SZC) at Sizewell? Is the Applicant content?
Pt 3 R30	East Suffolk Council	1	2	R30: Onshore decommissioning Would it assist the relevant planning authority to be notified of the relevant date on which the permanent cessation of commercial operation of the transmission and/or grid connection works occurs, for the purposes of defining more clearly and certainly when the decommissioning plans under R30(1) and (2) must be provided? Should that notification be secured?
Pt 3 R34	The Applicants Ministry of Defence	1	2	R34: Ministry of Defence surveillance operations Technical abbreviations 'RRH' for the term 'remote radar head' and 'RMS' for radar mitigation scheme are included in drafting, but the full terms to which they relate are not widely used in the dDCOs and are also set out in full in the relevant provision. The abbreviations appear superfluous. Can they be removed?

dDCO Commentaries	For the attention of:	1	2	Matter, Issue or Question:
Pt 3 R35	The Applicants NATS	1	2	<p>R35: Cromer Primary Surveillance Radar See the general comment on company names above and ensure that the drafting for NATS is correct. The intention in referring to a 'successor body' appears clear, but the drafting should be checked.</p> <p>The wording of this Requirement differs from that in the latest Draft SoCG [REP1-079]. Please confirm the latest situation relating to this requirement</p>
Pt 3 R37	East Suffolk Council	1	2	<p>R37: Decommissioning of relevant landfall works Would it assist the relevant planning authority to be notified of the relevant date on which the landfall works construction was completed, for the purposes of defining more clearly and certainly when the report under R37(1) is to be provided? Should that notification be secured?</p>
Pt 3 R38	The Applicants	1	2	<p>R38: Restriction on carrying out grid connection works where consented in another order Are there any circumstances in relation to works other than 'grid connection works' where there is scope for commencement under 'another Order' that requires an equivalent restriction on commencement, if commencement has already occurred under another Order?</p>
Pt 3 R41	The Applicants The Environment Agency Suffolk County Council East Suffolk Council	1	2	<p>R41: Operational drainage management plan Would the provision be improved by the following?</p> <p>a) In para (1) drafting providing that '<u>[t]he operational drainage plan must include a timetable for implementation</u>'; and</p> <p>b) In para (2) that '<u>[t]he operational drainage management plan must be implemented and maintained as approved</u>'.</p>

dDCO Commentaries			
	For the attention of:	Matter, Issue or Question:	
			<p>c) Having this requirement secure and cross-refer to a newly defined Work consisting of all surface water drainage infrastructure (as suggested by Suffolk County Council).</p> <p>Is Suffolk County Council content that East Suffolk Council as the relevant planning authority should lead on discharge of this required (in consultation with Suffolk County Council and the Environment Agency) to ensure coordinated input on subject matters with a strong bearing overall on design and appearance?</p>
Pt 3 None – missing requirement	The Applicants Natural England	1	<p>2 Missing Requirement – Ecosystem Services for Sandlings SPA</p> <p>Natural England have sought a requirement to ensure that proposed SPA mitigation measures in the form of planting must be in functioning condition/ providing ecosystem services as nesting habitat, before works can commence within the boundary of the SPA.</p> <p>a) The Applicants are requested to work with Natural England to frame an operable draft requirement by Deadline 7.</p> <p>b) If agreement cannot be reached, alternative drafting should be submitted together with reasons for the differences.</p>
Pt 3 None – missing requirement	The Applicants Natural England		<p>Missing Requirement – Security for ‘Without Prejudice’ HRA Compensation Measures</p> <p>The ExAs acknowledge ongoing work between the Applicants and Natural England on this point, with possible amended drafting emerging at Deadline 6. They are requested to advise the ExAs on the drafting that might be required to secure these measures.</p>
Pt 3 None – missing requirement	The Applicants Suffolk County Council		<p>Security for Memoranda of Understanding (MoUs)</p> <p>Suffolk County Council [REP5-058] although not agreeing necessarily that formal security is required, has proposed a form of words to secure</p>

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
	East Suffolk Council Economic, Tourism and Employment interests Interested Parties		<p>proposed MoUs between the Councils and the Applicants on skills, education and economic development through a new requirement. The proposed wording is reproduced below. Please provide your views on it.</p> <p>See also Obligations and Agreements below.</p> <p>The development shall not commence until a Memorandum of Understanding (MoU) has been agreed between the Applicant, Suffolk County Council, and East Suffolk Council. The MoU shall address the arrangements for securing the dissemination of skills and the integration of the supply chain into the local economy, including working to a shared set of objectives, and shall include measures for the periodic monitoring and review of those arrangements. The development shall be undertaken in accordance with the agreed MoU (including any review thereof).</p>
SCHEDULE 2 – Streets subject to street works			
From Pages 49	Suffolk County Council East Suffolk Council	1 2	<p>Streets subject to street works Please confirm that the streets subject to street works are in correct locations, correctly described and give rise to no other matters. Alternatively, submit any final proposed revisions or corrections.</p>
SCHEDULE 3 – Public rights of way to be temporarily stopped up			
From Pages 52	Suffolk County Council East Suffolk Council	1 2	<p>Public rights of way, extent of temporary stopping up and substituted temporary public rights of way Please confirm that the public rights of way, the extent of the proposed temporary stopping up and any substituted temporary public rights of way are in correct locations, correctly described and give rise to no</p>

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
			other matters. Alternatively, submit any final proposed revisions or corrections.
	SCHEDULE 4 – Footpaths to be stopped up		
From Pages 66	Suffolk County Council East Suffolk Council	1 2	Footpaths, extent of stopping up and substituted footpaths Please confirm that the footpaths, the extent of the proposed stopping up and any substituted footpaths are in correct locations, correctly described and give rise to no other matters. Alternatively, submit any final proposed revisions or corrections.
	SCHEDULE 5 – Streets to be temporarily stopped up		
From Pages 66	Suffolk County Council East Suffolk Council	1 2	Streets and extent of temporary stopping up Please confirm that the streets and the extent of the proposed stopping up are in correct locations, correctly described and give rise to no other matters. Alternatively, submit any final proposed revisions or corrections.
	SCHEDULE 6 – Access to works		
From Pages 66	Suffolk County Council East Suffolk Council	1 2	Descriptions of Accesses Please confirm that proposed vehicular accesses are in correct locations, correctly described and give rise to no other matters. Alternatively, submit any final proposed revisions or corrections.

dDCO Commentaries		For the attention of:		Matter, Issue or Question:
				SCHEDULE 7 – Land in which only new rights etc. may be acquired
From Pages 67	The Applicants Affected Persons	1	2	<p>Extent and description of rights Please address the following matters:</p> <p>a) Is the drafting of individual rights in the Schs sufficiently precise? b) Are all those rights listed for each plot number necessary for the individual plots in question?</p> <p>Provision and justification for land in which only new rights etc. may be acquired continues to be examined orally at CAHs 2 & 3 as necessary and further written questions may be raised at ExQs3 if required.</p>
				SCHEDULE 8 – Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions
From Pages 88		1	2	<p>Other matters Provision and justification for the modification of compensation and compulsory purchase enactments continues to be examined orally at CAHs 2 & 3 as necessary and further written questions may be raised at ExQs3 if required.</p>
	The Applicants	1	2	<p>Land Compensation Act 1961 (“the 1961 Act”) There are multiple references in Articles to the availability of compensation ‘to be determined, in case of dispute, under Part 1 of the 1961 Act’. That Part in principle applies to compulsory acquisition but not to the temporary possession, extinction of rights or use of land (TP). Where articles relate to compensation for what amounts to TP and invoke the 1961 Act procedure, is it necessary for these Schs (or for</p>

dDCO Commentaries	For the attention of:		Matter, Issue or Question:
			other drafting) to modify the application of Part 1 of the 1961 Act, placing beyond doubt its availability to persons making claims in relation to Articles providing TP powers?
	The Applicants	1 2	<p>Additional Drafting – Inter-relationships between the dDCOs on CA and TP</p> <p>In circumstances where CA and/or TP powers have been exercised to the benefit of the undertaker under one Order, but the effect of that is to remove the need for the beneficiary of the second Order to exercise the same powers, how is the falling-away of the powers in the second Order provided for in the dDCOs.</p> <p>a) Is additional drafting required (noting that it may not be in these Schs) or, if not b) How is the issue provided for?</p> <p>See also Articles empowering CA and TP</p>
SCHEDULE 9 – Land of which temporary possession may be taken			
From Pages 92		1 2	<p>No matters</p> <p>Provision and justification for temporary possession of land continues to be examined orally at CAHs 2 & 3 as necessary and further written questions may be raised at ExQs3 if required.</p>

dDCO Commentaries		For the attention of:	Matter, Issue or Question:
SCHEDULE 10 – Protective Provisions			
From Pages 93	The Applicants Beneficiaries of Proposed Protective Provisions	1	2 Beneficiary Positions on Protective Provisions The Applicant is requested to provide a table at Deadline 7 identifying whether the beneficiaries of the proposed protective provisions support the provisions as drafted, supported by evidence (correspondence from the proposed beneficiaries). a) If any provisions are un-agreed at Deadline 7, this should be explained, and the reasons made clear by the Applicants and the relevant prospective beneficiary. b) Prospective beneficiaries seeking additional or alternative provisions are requested to provide these and their reasons for them, no later than Deadline 6.
Part 5 Para 2	The Applicants	1	Protection for East Anglia TWO Ltd Please review the schedule specific definitions. There is apparent overlap with general definitions, and it is not clear that this is required. Please attempt to harmonise with general definitions in Arts 2(1) to the maximum extent feasible.
Part 5 Para 2	The Applicants		2 Protection for East Anglia ONE North Ltd Please review the schedule specific definitions. There is apparent overlap with general definitions, and it is not clear that this is required. Please attempt to harmonise with general definitions in Arts 2(1) to the maximum extent feasible.

dDCO Commentaries				
	For the attention of:		Matter, Issue or Question:	
Matters not provided for	The Applicants Nuclear power station operators and developers at Sizewell (Sizewell A nuclear power station 'SZA', Sizewell B nuclear power station 'SZB', Sizewell C proposed new nuclear power station 'SZC')	1	2	<p>Sizewell Protective Provisions</p> <p>A request for protective provisions was heard orally at ISHs6 and has now been supported by drafting for a new protective provision from EDF Energy Nuclear Generation Limited ("NGL"). NGL is the owner and operator of the nearby Sizewell B nuclear power station ("SZB") [REP5-068].</p> <p>a) The Applicants' comments are sought on SZB's drafting. b) If the Applicants do not agree to include any protective provisions for SZB, it is asked to provide reasons. c) If the Applicants agree with the need for protective provisions for SZB but propose drafting changes to the submitted drafts by SZB, these changes should be submitted with reasons for them set out. d) The Applicants and other nuclear operators/ developers (SZA and/ or SZC) are asked whether there is any outstanding need for additional protective provisions for Sizewell operations or development. If so, drafts should be provided, with reasons for these.</p>
SCHEDULE 11 – Hedgerows				
From Pages 118	The Applicants East Suffolk Council	1	2	<p>Pt 1: removal of important hedgerows</p> <p>Please respond to the following matters:</p> <p>a) Is it sufficient that only 'important hedgerows' are identified? b) Is any provision required for other hedgerows in the Orders lands? c) Please confirm that proposed hedgerow removals to be carried out are in the correct locations, as assessed in the Environmental Statements, and give rise to no other matters. Alternatively, submit any final proposed revisions or corrections.</p>

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
			The Applicants are additionally asked to clarify the apparent conflict between documents providing for the same hedgerows being subject to removal [REP3-011], [REP3-030] and crossed with reduced width [REP3-010]. Please submit updated documents.
	East Suffolk Council	1	2 Pt 2: crossings of important hedgerows with reduced working widths Please confirm that proposed working width reductions are in correct locations and give rise to no other matters. Alternatively, submit any final proposed revisions or corrections.
SCHEDULE 12 – Trees subject to tree preservation orders			
From Pages 122	East Suffolk Council	1	2 Tree Preservation Orders Please confirm that the correct species, locations and Tree Preservation Orders are referred to, that the works to be carried out are as assessed in the Environmental Statements and give rise to no other matters. Alternatively, submit any final proposed revisions or corrections.
SCHEDULE 13 – Deemed licence under the 2009 Act - generation assets			
	The Applicants The Marine Management Organisation	1	2 General Please consider the following matters: <ul style="list-style-type: none"> a) Drafting references in the DML to “this Order” and “this Schedule” should arguably for better certainty be to “this licence”. b) Drafting references in the DML to a schedule “of the Order” should arguably be amended to “to the Order”. Schedules are Schedules “to” not “of” a statutory instrument or Act (unlike articles,

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
			paragraphs, sections, Parts, which are "of" the statutory instrument or Act).
	The Applicants The Marine Management Organisation	1	2 <p>Pt 1: Licensed marine activities Paras 2 & 3: Details of licensed marine activities The ESs and dDCOs both reference the need for the Proposed Developments to include a helipad, tower, and mast on the offshore operation and maintenance platforms. Both the ESs and dDCOs specify the height of the offshore platform at 50m LAT. However, the DMLs do not appear to secure a maximum height for the helipad, tower, and mast in the range of parameters secured in Conditions 2 and 3 to ensure that the proposed developments are within the Rochdale Envelope.</p> <p>a) Should the assessed maximum heights be specifically secured, or would it be sufficient for a general provision to be added to paras 2 and 3 requiring all development to within the maximum extent assessed in the ESs? b) Can preferred amended provisions be submitted on this point.</p> <p>See also Schs 1 Pt 1.</p>
	The Marine Management Organisation	1	2 <p>Paras 2 & 3: Details of licensed marine activities The classes of licensed marine activities in a DML must be within the scope provided by the classes of works and relevant design parameters for works permitted in the dDCOs.</p> <p>a) Is the Marine Management Organisation content that no works are provided for in the DMLs that are not otherwise empowered in the dDCOs generally?</p>

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
			b) Is any other drafting review required to ensure a clear and nested relationship between the DMLs details of licensed marine activities and Schs 1 Pt 1 of the dDCOs?
	Applicants The Marine Management Organisation The Wildlife Trusts Marine Environment Interested Parties		Condition 21(3) – construction monitoring - cessation of piling Can the MMO, the Applicants, the Wildlife Trusts confirm that the condition wording is now agreed and that any further discussions in respect of the term 'significantly' will be addressed through updates to the Offshore In Principle Monitoring Plan, as opposed to the DML condition itself?
SCHEDULE 14 – Deemed licence under the 2009 Act – offshore transmission assets			
		1 2	General See general commentary on Schs 13.
	The Marine Management Organisation	1 2	Paras 2 & 3: Details of licensed marine activities Please address the same point about classes of licensed activities for this DML as is made for Schs 13.
	Applicants The Marine Management Organisation The Wildlife Trusts Marine Environment Interested Parties		Condition 17(3) – construction monitoring - cessation of piling Please see the comments in relation to the equivalent provision in Sch 13 (Condition 21(3)) and respond to the same matter for this condition.

dDCO Commentaries		For the attention of:	Matter, Issue or Question:
SCHEDULE 15 – Arbitration Rules			
From Pages 160	The Applicants Interested Parties / Affected Persons potentially engaged by Arbitration	1	2
			<p>Level of detail</p> <p>The proposed arbitration rules are at a significantly higher level of detail than those typically provided for in made DCOs (see the discussion of these in the Thanet Extension Offshore Wind Farm Recommendation Report (the Thanet Report) from page 441 (section 11.4)).</p> <p>As discussed from Para 11.4.18 in the Thanet Report, where additional detailed provisions are proposed, it is relevant to consider what <i>'mischief and defect'</i> the new provisions address that is not already adequately managed by established law and practice in existing made DCOs.</p> <p>In the case of the East Anglia THREE made DCO, the response to that question was that additional detailed arbitration provisions were justified to respond to an overlap in licenced sea areas between the approved development and an oil and gas exploration area. The rationale for more than typically detailed arbitration provisions is not made clear for these dDCOs. However, those provisions were highly specific, whereas the provisions in this schedule are of general application to all matters subject to arbitration under Art 37.</p> <p>a) Should the proposed arbitration provisions be retained at this level of detail?</p> <p>b) Are the proposed arbitration provisions in these dDCOs necessary, justified and proportionate?</p> <p>c) Are the specific procedures and timescales appropriate and if not, how should they be amended?</p>

dDCO Commentaries	For the attention of:		Matter, Issue or Question:
Para 6	The Applicants Interested Parties / Affected Persons potentially engaged by Arbitration		<p>Costs The general principle in planning proceedings (other than civil litigation) is that absent 'unreasonable behaviour' by a party, costs normally lie where they fall.</p> <p>a) What is the justification for what is understood to be a novel approach where costs run with the event? b) The Applicants are requested to remove the stray bracket `]' at the end of para (3).</p>
Para 7	The Applicants Interested Parties / Affected Persons potentially engaged by Arbitration	1	<p>Confidentiality Para 7 provides that arbitration proceedings are confidential unless agreed otherwise between the parties to the arbitration.</p> <p>a) Are there any subject matters or circumstances in which an arbitration relates to matters which are public interest matters and should be publicised? b) If so, how might that be provided for in drafting?</p>
Para 9	The Applicants Interested Parties / Affected Persons potentially engaged by Arbitration	1	<p>Emergency Arbitrator This is understood to be a novel provision.</p> <p>a) Has any specific mischief or harm occurred to an existing or proposed Offshore Wind Farm development attributable to the absence of such a provision? b) The Applicants are asked to clarify the basis and any precedent for the proposal to include this provision.</p>

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
Generally	The Applicants	1	2 Arbitration Procedures affecting the Secretary of State Is the Secretary of State understood to be content to undertake the procedures identified and within the timescales provided?
SCHEDULE 16 – Procedure for discharge of requirements			
Paras 1	Applicants Discharging authorities (see Arts 38)	1	2 Applications for approvals – time period and deemed consent a) Are the discharging authorities content with the time period provided for applications for the discharge of requirements? b) If not, what should the relevant period be – and what is the justification for the change? East Suffolk Council has noted [REP5-047] considerable variability in recently made DCOs: it promotes 56 days. Would the Applicant be content with that period? c) Are the discharging authorities content with deemed consent provision in Paras 1(3) in the event that the discharging authority does not determine an application within the decision period? East Suffolk Council has noted that the deemed consent provision was not included in the made East Anglia ONE or East Anglia THREE DCOs and opposes them here on that basis. The Applicants are asked to identify specific concerns that have led to the proposed introduction of deemed consent. d) If not, what should the relevant procedure be – and what is the justification for the change? e) What specific additional information should the undertaker provide to the discharging authorities and how (for example as provided for in the made Vanguard DCO) might this be provided for?

dDCO Commentaries				
	For the attention of:	1	2	Matter, Issue or Question:
Paras 2	Discharging authorities (see Arts 38)	1	2	Further information a) Are discharging authorities content with the procedure, time period and deemed satisfaction process provided for further information requests? b) If not, what should the relevant procedure and period be – and what is the justification for the change?
Paras 3	Discharging authorities and appeal parties (the consultees) (see Arts 38)	1	2	Appeals a) Are discharging authorities and other appeal parties (the consultees) content with the procedure and time period provided for appeals against refusals? b) If not, what should the relevant procedure and period be – and what is the justification for the change?
SCHEDULES – Missing provision for certified documents				
None – Missing provision	The Applicants	1	2	Certified documents Would reference to certified documents be improved if a tabulated schedule of documents including the Environmental Statement for each application and any amendments to it, listing dates and version numbers, were included to support Arts 36?
Explanatory Note				
Pages 167	East Suffolk Council Suffolk County Council Town and Parish Councils	1	2	Inspection of Hard Copy Documents The Explanatory Note provides: 'A copy of the plans and book of reference referred to in this Order and certified in accordance with article 36 (certification of plans etc.) of this

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
			<p>Order may be inspected free of charge at East Suffolk Council Customer Services at Woodbridge Library, New Street, Woodbridge IP12 1DT.'</p> <p>a) Are the Councils content that the hard copy documents referred to are lodged at this location?</p> <p>b) Would any other location(s) be more appropriate or convenient for access by members of local communities who cannot use digital technology?</p> <p>c) Does East Suffolk Council anticipate the maintenance of services of this nature at Woodbridge Library for the foreseeable future?</p>
	The Applicants East Suffolk Council Suffolk County Council Town and Parish Councils	1	2 Inspection of digital documents It has become commonplace for the inspection of documents to be provided for online. Whilst innovative in statutory drafting terms, might it be appropriate for an online document service or domain name to be referred to in the Explanatory Note?
	Format and validation		
The dDCOs	The Applicants	1	2 Format and validation The Applicants are requested to provide with their ultimate dDCO submissions, a copy of each dDCO in Microsoft Word that is in accordance with format for Statutory Instruments (SIs) in the official draft SI template and has passed through the draft SI checker. To the extent feasible, all outstanding format issues must be addressed before submission and the Applicants must submit the checker reports to evidence that this has been done, by Deadline 7 .

dDCO Commentaries		For the attention of:	Matter, Issue or Question:
		Agreements and Obligations	
The dDCOs	The Applicants Suffolk County Council East Suffolk Council The MMO	1	<p>2 Agreements and obligations</p> <p>DCOs may be supported by agreements (including commercial agreements/ contracts or deeds under seal) and/ or Planning Obligations or other forms of statutory obligation. Relationships between parties may also be regulated by processes such as Memoranda of Understandings (MoUs) which may or may not be intended to create legal relations. For any such documents, if the SoS is to place weight upon them for a planning decision:</p> <ul style="list-style-type: none"> a) their purpose and relevance to planning must be justified; b) the reason why their subject matters are required to be dealt with in a separate document and not on the face of the dDCOs needs to be made clear; and c) where to enter into force or provide security for their subject matter, they require to be executed between parties, that process must be completed, and evidence of execution must be provided - before the end of the Examinations. <p>The ExAs note that some such processes may relate to subject matters that are viewed as confidential between parties to them. Where for example they relate to (for example) the withdrawal of a statutory undertaker's RR, it can be sufficient for the process to be evidenced by documents from the Applicant(s) and the statutory undertaker concerned, making clear that the agreement has been concluded and that consequently a RR has been withdrawn. However, if any reliance is placed on a process providing security for specific actions, outcomes or standards to be met that are important and relevant, then the terms of the relevant document need to be provided to the ExAs.</p>

dDCO Commentaries			
	For the attention of:		Matter, Issue or Question:
			<p>A working list of all such processes and progress towards their finalisation is to be provided at Deadline 6.</p> <p>Drafts for consultation and comment between parties must be provided by Deadline 7 alongside the final dDCO. If elements of these documents are considered to be confidential that must (for reasons) be made clear, but the process of consultation and comment between the engaged parties must continue.</p> <p>Final positions and (where these are not confidential), final texts must be submitted for Deadline 8, synchronised with final Statements of Common Ground. Where agreements are required to be executed, this is the point at which execution must occur and be evidenced.</p>
Skills MoU	The Applicants Suffolk County Council East Suffolk Council Economic, Tourism and Employment interests Interested Parties		<p>Skills, education and economic development MoUs</p> <p>The conclusion of MoUs on these matters is supported by the Applicants, East Suffolk and Suffolk County Councils.</p> <p>a) Are there any remaining arguments for an alternative form of provision or security and if so, what should that be and what should be included within it?</p> <p>b) Suffolk County Council have suggested the following text for a new Requirement [REP5-058]. Please provide your views on the need for and content of this (see Missing Provision – requirements – MoU above).</p>