

# Norfolk Vanguard Offshore Wind Farm Explanatory Memorandum

## Development Consent Order

Applicant: Norfolk Vanguard Limited  
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Pursuant to APFP Regulation: 5(2)(c)

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*Photo: Kentish Flats Offshore Wind Farm*



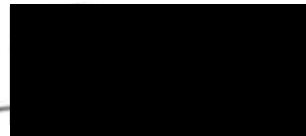
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For and on behalf of Norfolk Vanguard Limited

Approved by: Rebecca Sherwood and Ruari Lean

Signed:



Date: June 2018

Norfolk Vanguard Limited

Norfolk Vanguard Offshore Wind Farm

Explanatory Memorandum

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## THE PLANNING ACT 2008

### THE INFRASTRUCTURE PLANNING (APPLICATIONS: PRESCRIBED FORMS AND PROCEDURE) REGULATIONS 2009 REGULATION 5(2)(c)

#### THE PROPOSED NORFOLK VANGUARD OFFSHORE WIND FARM ORDER

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### EXPLANATORY MEMORANDUM

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## 1 Introduction

- 1.1 This memorandum accompanies an application for development consent (the **Application**) by Norfolk Vanguard Limited (the **Applicant**) to construct and operate the Norfolk Vanguard Offshore Wind Farm (the **Project**). The memorandum explains the purpose and effect of each article of, and Schedule to, the draft Norfolk Vanguard Offshore Wind Farm Order (the **Order**), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
- 1.2 Notwithstanding its repeal, the wording used in the draft Order has been derived from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. In some cases, the draft Order draws from the drafting used in Orders for similar developments made under the Planning Act 2008 (the **2008 Act**), the Transport and Works Act 1992 and other Acts authorising development. A table has been included at Schedule 1 to summarise the basis of the drafting used in the case of each Article of the draft DCO. A comparison of the Articles of the draft Order with the Articles of the Model Provisions is also attached at Schedule 4.
- 1.3 A detailed explanation of the authorised development is set out in the Project Description chapter (chapter 5) of the Environmental Statement (Document 6.1) which accompanies the Application.
- 1.4 As the Order seeks to apply and modify statutory provisions, including concerning the compulsory acquisition of land and the treatment of certain requirements as planning conditions, in accordance with sections 117(4) and 120(5) of the Planning Act 2008 (**2008 Act**), it has been drafted as a statutory instrument.

## 2 The purpose of the Order

- 2.1 In overview, the purpose of the Order is to grant the Applicant development consent for a Nationally Significant Infrastructure Project (**NSIP**), namely:
- 2.1.1 An offshore generating station with an electrical export capacity of up to 1,800 MW at the point of connection to the offshore electrical platform(s) to be located more than 47 km from the coast of Norfolk, occupying an offshore array site of approximately 592 km<sup>2</sup> over two distinct areas, Norfolk Vanguard East and Norfolk Vanguard West;
  - 2.1.2 Up to two accommodation platforms;
  - 2.1.3 Up to two meteorological masts;
  - 2.1.4 Up to two LIDAR buoys and up to two wave buoys; and

Norfolk Vanguard Offshore Wind Farm

- 2.1.5 A network of subsea cables.
- 2.2 The Order also includes associated development linked to the NSIP, namely:
  - 2.2.1 Up to two offshore electrical platforms;
  - 2.2.2 A subsea electrical connection and associated fibre optic cables between the offshore electrical platforms, and from those electrical platforms to a landfall at Happisburgh South, North Norfolk;
  - 2.2.3 An underground electrical connection comprising up to four cables installed in ducts and four additional cable ducts to accommodate Norfolk Boreas, together with associated fibre optic cables;
  - 2.2.4 A new onshore project substation housing the principal electrical equipment, located adjacent to the existing National Grid substation at Necton, Norfolk;
  - 2.2.5 An underground electrical connection and associated fibre optic cables between the new onshore project substation and the existing National Grid substation;
  - 2.2.6 An extension to the existing National Grid substation to accommodate the Norfolk Vanguard connection points;
  - 2.2.7 Overhead line replacement works; and
  - 2.2.8 Creation of permanent accesses from the A47 to the new onshore project substation and the extended National Grid substation.
- 2.3 The Order also contains four deemed marine licences under section 66(1) of the Marine and Coastal Access Act 2009 (the **2009 Act**). In addition, the Order contains powers to acquire land, or rights over land, compulsorily for the construction and operation of the Project.
- 3 Nationally Significant Infrastructure Project – offshore generating station**
  - 3.1 Pursuant to sections 14(1)(a) and 15(3) of the 2008 Act, an offshore generating station in England or Wales having a capacity of more than 100 MW is an NSIP.
  - 3.2 Section 31 of the 2008 Act provides that development consent is required under that Act to the extent that a development is or forms part of an NSIP. As the proposed generating station is proposed to have an electrical export capacity of up to 1,800 MW it qualifies as an NSIP in its own right.
  - 3.3 The detailed elements which comprise the generating station, and its associated development, are considered separately below.
- 4 The need for flexibility in the Order**
  - Phasing
    - 4.1 Flexibility is sought in relation to phasing for the construction of the Project. The Applicant is considering constructing the Project in either one or two phases, with a maximum electrical export capacity of 1,800 MW.
    - 4.2 The Environmental Statement has assessed the worst case parameters from the phasing of construction on a case-by-case basis. The Order has therefore been drafted to reflect this approach, particularly with regard to maximum parameters and, for the offshore works, the structure of the deemed marine licences (**DMLs**). Implications of phasing on the drafting of the Order are considered further below.
  - Structure of deemed marine licences
    - 4.3 As drafted, the Marine and Coastal Access Act 2009 suggests that while a marine licence may be transferred in whole, it may not be transferred in part (or at least the drafting did not anticipate this). In light of this, the Applicant's proposed approach is to include separate generation and transmission DMLs. This will allow for the separate transfer of the transmission assets within the transmission DMLs to an Offshore Transmission Owner (**OFTO**) under The Electricity (Competitive Tenders for Offshore Transmission Licences)

Regulations 2010 (SI 2010/1903). The generation assets within the generation DMLs can then be retained by the undertaker for generation.

- 4.4 This approach has been adopted on a number of offshore wind farms consented under the 2008 Act, and most recently in the East Anglia THREE offshore wind farm. As with East Anglia THREE, the number of generation and transmission DMLs are relevant to the number of phases in which the Project may be constructed. For example, if the Project is constructed in two phases, two separate transmission DMLs can be used to enable the transmission assets for each phase to be transferred separately to an OFTO at different points in time and, if relevant, to different OFTOs.
- 4.5 It is not yet known how the phases will be constructed in terms of export capacity. The drafting approach used allows for flexibility whilst also restricting what can be constructed to what has been assessed in the Environmental Statement. For example, the drafting permits the Applicant to install:
  - 4.5.1 A single phase with an export capacity of 1,800 MW. In this case only one generation DML and one transmission DML would be used under the Order; or
  - 4.5.2 Two phases with a maximum export capacity of 1,800MW which, for example, may be comprised as two phases with an export capacity of 900MW each or two phases with an export capacity of 1,200 MW and 600MW respectively. In this case both sets of generation and transmission DMLs would be used under the Order. The DMLs are not prescriptive as to the amount of export capacity which must be brought forward under each phase, provided that the total export capacity does not exceed 1,800MW and the maximum parameters across both sets of DMLs (as assessed in the Environmental Statement) are not exceeded.
- 4.6 The DMLs also include a notification procedure to ensure that the Marine Management Organisation (**MMO**) is informed prior to commencement of construction as to whether a single phase or a two phase approach will be followed.
- 4.7 The approach has therefore provided for up to four separate DMLs as follows:
  - 4.7.1 Licence 1 – generation assets (Phase 1)
  - 4.7.2 Licence 2 – generation assets (Phase 2)
  - 4.7.3 Licence 1 – transmission assets (Phase 1)
  - 4.7.4 Licence 2 – transmission assets (Phase 2).
- 4.8 Using this approach, it is possible to implement the development in one or two phases and to allow the transfer of the DMLs for each phase and type of asset (i.e. generation or transmission) to separate companies if necessary.
- 4.9 The table provided at Schedule 2 highlights the differences between the conditions in Part 4 of the two sets of generation and transmission DMLs.

Phasing of onshore construction works
- 4.10 Onshore construction works will be undertaken in one continuous construction period but will be phased to allow for the laying of ducts separately to the pull through of cables and the construction of the onshore project substation. A single phase of duct installation works is proposed irrespective of the approach to offshore phasing. However, phasing for the pulling of cables through the ducts and construction of the onshore project substation will be determined by the number of offshore phases taken forward. If one offshore phase is taken forward there will be a single phase of works to pull the cables through the ducts and a single phase of works to construct the onshore project substation. If two offshore phases are undertaken, the cables will be pulled through the ducts in two separate phases and the onshore project substation will be constructed in two separate phases. The approach to phasing of construction works is set out more fully in the Project Description chapter (Chapter 5) of the Environmental Statement (document 6.1).



#### Offshore flexibility

- 4.11 The Order defines the generating station in paragraph 1 of Schedule 1, Part 1 (*Authorised development*). It is limited by the 1,800 MW electrical export capacity, which is expressed to be a maximum i.e. "up to 1,800 MW", and will be measured at the point of connection to the offshore electrical platform(s).
- 4.12 The constituent elements of the generating station are specified in Work No. 1, together with offshore associated development in Work Nos. 2 to 4A which are expressly limited to the Order Limits seaward of Mean Low Water Springs (**MLWS**). Work No. 4B covers the intertidal area and Works Nos. 4C to 12 specify the onshore associated development linked to the NSIP within the Order Limits landward of Mean High Water Springs (**MHWS**). Part 2 of Schedule 1 specifies the ancillary works. Work No. 4 has been split into three separate works (Work Nos. 4A, 4B and 4C). This enables the separation of Works within the MMO and North Norfolk District Council's jurisdiction. For instance, Work No. 4A falls solely within the jurisdiction of the MMO and Work No. 4C falls solely within the jurisdiction of North Norfolk District Council. Work No 4B relates to the intertidal area where both the MMO and North Norfolk District Council have jurisdiction.
- 4.13 Within the Order, flexibility has been provided in relation to the generating station and linked associated development, and in the view of the Applicant this flexibility, which has previously been critical to the development of offshore wind farms in the UK, is fundamental to whether the Order is fit for purpose.
- 4.14 The reasons for this principally relate to the need to manage and drive down the cost of offshore wind developments to justify equity investment and access debt funding in a competitive international market. This includes the need to maintain competitive tension in the procurement process driving down costs; the need to take advantage of new technology developments and emerging products in the market for offshore wind turbine generators and other equipment; and the need to drive down the cost of energy for the purposes of tendering for Contracts for Difference.
- 4.15 The final design of a wind farm depends on a number of factors which include the size, height and capacity of the chosen turbine type; electrical design; length of cables; areas where development is constrained; the outcomes of site investigations, and ongoing wind monitoring results. All these are considered post-consent at the stage of detailed design and optimisation when the final number and type of turbines and their location will be decided as a function of site constraints and viable layout. This final design will be approved under the provisions of the deemed marine licences.

#### Onshore flexibility

- 4.16 Similar flexibility is required for the onshore elements of the development. With regard to the onshore project substation, the optimal design will be determined through the contracting process. Each tenderer will offer different technologies, designs and layouts for the onshore project substation within the parameters of any consent obtained, which enables the optimal design solution to be chosen. Final detailed design of the onshore project substation will be agreed after the appointment of a contractor.
- 4.17 As a result, flexibility within the Order, both onshore and offshore, is needed to optimise the Project in the light of variable costs and supply chain availability; to accommodate technology development in turbines and other equipment; and to allow for optimal detailed design and procurement within the parameters of consents.

#### Policy support for flexibility

- 4.18 The use of flexibility in project details within an Order is expressly endorsed by National Policy Statements EN-1 (at paragraphs 4.2.7 to 4.2.10) and EN-3 (at paragraphs 2.6.42 to 2.6.45), provided the resulting variables are fully assessed in terms of worst case effects. Paragraph 4.2.9 of EN-1 explains that where flexibility is sought, it will be necessary to include appropriate requirements within the Order to ensure that the Project "envelope" is limited to that which has been assessed in the Environmental Statement.

- 4.19 This approach, known as the “Rochdale Envelope”, has been followed numerous times in relation to large scale offshore wind farms consented under section 36 of the Electricity Act 1989 and the 2008 Act, and it is an approach which is well known and adopted by statutory consultees. Relevant statutory consultees have all been made aware of the parameters used in the Environmental Impact Assessment (**EIA**) and the Order.

Parameters in the Order

- 4.20 The overall result of the wording in Part 1 of Schedule 1 (i.e. paragraph 1 and Work Nos. 1, 2 3 and 4A) and Requirement 2 (*Detailed offshore design parameters*) in Part 3 is to allow similar flexibility in the Order as in previous consents. In particular, the undertaker will have freedom, within the specified parameters, as to the number of wind turbines installed, the size of turbines, the resulting electrical export capacity of the generating station up to 1,800 MW, the extent to which the area within the Order limits is used, the precise layout of turbines, accommodation platforms, meteorological masts, offshore electrical platforms and the arrangement of cabling between the turbines, accommodation platforms, meteorological masts and offshore electrical platforms. The undertaker will also have significant flexibility with regard to the configuration and specification of the HVDC export infrastructure.
- 4.21 The Planning Inspectorate (**PINS**) has issued an Advice Note (Advice Note 9) which suggests (page 10) that a practical way forward in the use of the Rochdale Envelope would be for the Order application to “*set out specified maximum and minimum*” parameters, and gives possible examples, for offshore wind farms, of maximum/minimum turbine numbers; hub height and blade tip heights; minimum clearance above mean sea level; and separation distances between turbines. While these examples are not intended to be exhaustive for use by promoters, many of the fundamental parameters which define the majority of likely significant effects are included in the Advice Note, and each is considered further below, with reasoning provided for including, or not including, each parameter within the Order, or including parameters which are not included in the Advice Note.
- 4.22 The parameters included in the Order are set out in the Appendix to this Explanatory Memorandum for ease of reference.

*Maximum capacity and maximum number of turbines*

- 4.23 The total capacity of an offshore wind project, together with its project boundary, is an important defining characteristic. The maximum electrical export capacity of the Project is 1,800 MW measured at the point of connection to the offshore electrical platform(s). Export capacity at the point of connection, rather than capacity of the wind turbine generators, has been used in the description of the authorised development in the Order to allow for internal cable losses and potential turbine non-availability at the wind farm array. The total export capacity comprises the over-arching project description, and all other parameters are in effect subordinate to that description. It controls the maximum number of turbines that can be installed at any given turbine capacity, with an absolute maximum number of turbines for the Project set at 200.

*Minimum number of turbines*

- 4.24 Advice Note 9 suggests a minimum number of turbines should be specified. It is not considered that this would be a workable or appropriate parameter for the Applicant.
- 4.25 It is not necessary to impose a minimum to ensure that the project exceeds the NSIP threshold of 100 MW as that threshold turns on what the capacity of the scheme is expected to be at the point of application and consent. This is not in doubt – the expected electrical export capacity is 1,800 MW. While a lower figure may in fact be constructed once the turbine size/capacity has been decided and the scheme design optimised after the grant of consent, there is no reasonable basis to expect that the capacity constructed would be less than 100 MW.
- 4.26 Whether setting a minimum number of turbines as a parameter would either be reasonable or enforceable must be open to doubt. An offshore wind farm consent is a valuable asset, and if a developer chooses only to utilise part of it, there will invariably be very good commercial and



technical reasons for this. The flexibility sought in a modern large scale development consent for a large offshore wind farm is fundamental to whether or not the project will be constructed at all, and goes to the heart of whether the consent is fit for purpose to permit a buildable, economically viable project. This may not be the case for other types of, particularly onshore, development, but it is the case for offshore wind farms.

- 4.27 There can be no EIA justification for seeking to impose a minimum turbine requirement, since the fewer the number of turbines, the lesser the impact.
- 4.28 To seek to impose a minimum number of turbines would also cut across a long standing principle of consents for development, namely that it is lawful for less than the full extent of the consent to be constructed, as long as what is constructed is in accordance with the requirements of the consent.
- 4.29 The other issue which arises is whether a minimum number of turbines is needed to address the point in the Advice Note that the project parameters should not be "*so wide ranging as to represent effectively different schemes*". The project is fundamentally defined by the Order Limits, the nature of the development (an offshore wind farm) and the maximum 1,800 MW export capacity. It is inherent in this type of project that there will be variations in turbine numbers and scheme layout, as already explained, and it cannot properly be regarded as giving rise to "*effectively different schemes*" to the extent that an Order in these terms cannot lawfully be granted. Numerous large scale consents on an equivalent basis have already been granted under the Electricity Act 1989, and more recently under the 2008 Act, for offshore wind farms without a minimum number of turbines being specified.

*Maximum and minimum hub height*

- 4.30 It is accepted by the Applicant that maximum hub height is a parameter which is appropriate for inclusion in the Order. The maximum height (of 200 metres from HAT) serves to fix the Environmental Statement assessments and confirms the maximum height at which static (rather than rotating) elements of each turbine would be seen. However a minimum hub height is not necessary as this is inherently defined by the minimum blade clearance.

*Maximum and minimum blade tip height and clearance to mean sea level*

- 4.31 The maximum blade tip height is a fundamental parameter and has been fixed at 350 metres (above HAT). The minimum blade clearance to MHWS is set at 22 metres to reflect the long standing position of the Royal Yachting Association and the inclusion of this parameter in previous offshore wind farm consents.
- 4.32 A minimum blade tip height (i.e. the lowest level at which the highest blade could pass) is not referred to in any of the assessments and is inherently fixed by the minimum blade clearance. It is not therefore included as a proposed parameter.

*Minimum separation distances between turbines*

- 4.33 A minimum separation distance of 680m between turbines has been adopted. The separation is to allow time for the energy in the wind to recover. This approach of applying minimum separation distances has been commonly used for Electricity Act 1989 and 2008 Act consents.
- 4.34 The number of variables affecting the final optimised layout, including the extent to which the area within the Order Limits is used or not used, mean that a condition governing scheme layout which goes beyond the specified minimum separation distances is not appropriate. Whilst in practice most offshore wind farms have been built on a broad grid arrangement, there needs to be flexibility on this issue in the Order, to allow for detailed design and optimisation.

*Maximum rotor diameters*

- 4.35 Whilst not mentioned as a parameter in the Advice Note, the Applicant considers that a parameter on maximum rotor diameter is necessary to ensure a robust EIA. The total blade swept area of the turbines is a key factor in different assessments. This approach also

provides an indirect control over the capacity of turbines although the 1,800 MW maximum export capacity means that an individual limit on turbine capacity is not necessary, as it has no bearing on the assessments in the Environmental Statement.

*Foundation parameters*

- 4.36 It is fundamental to the Project that there should be flexibility to use different foundation types. Four different foundation types are provided for: monopile (piled or suction caisson), jacket (piled or suction caisson), gravity base or floating (piled or gravity anchor). The choice of foundations will be influenced by a variety of factors, as explained in the project description chapter of the Environmental Statement (chapter 5). In terms of the Order, the Applicant has considered which design parameters for each type of foundation are important to ensure a complete and robust EIA, and these have been included in the Order.

*Offshore electrical platforms, accommodation platform, meteorological masts and buoys*

- 4.37 The number of meteorological masts, accommodation platforms and offshore electrical platforms will not exceed two, two and two respectively. The type of meteorological mast, accommodation platform, and offshore electrical platform will be determined as part of the post consent detailed design and optimisation process, and will depend on the final layout and electrical design considerations. For the reasons given above, the precise design of the meteorological masts, accommodation platforms and offshore electrical platforms cannot be fixed at this time. Accordingly, parameters limiting their dimensions and foundation arrangements (where relevant) are included in the Order. Their final location within the Order limits will depend on post consent detailed design and optimisation.

*Array, interconnector link, and export cables*

- 4.38 The precise number, layout and total length of the array, interconnector link, and export cables cannot be fixed until post consent design optimisation. The key factor for assessment purposes is the total cable length, based on the maximum number of turbines and a worst case layout for cabling, and the maximum length has been included as a parameter in the Order, whether under a single phase or two phased approach.

*Offshore Order Limits and offshore plans*

- 4.39 The final parameter is the Order Limits. The nature of the flexibility sought necessarily means that the offshore Works Plan is very simplistic. It is not possible to provide a more detailed plan, for the reasons given above.
- 4.40 It is important to bear in mind that under the deemed marine licences contained in Schedules 9 to 12 of the Order, the undertaker must submit final construction details for approval by the MMO before construction. The MMO must ensure that final construction details conform with the description of Works Nos. 1 to 4B and compliance with the design parameters in Part 4, in conditions 1 to 7 in the deemed marine licences for the generation assets and in Part 4, in conditions 1 to 2 in the deemed marine licences for the transmission assets. Those submitted details will specify the number, dimensions and layout of the Wind Turbine Generators (**WTGs**), accommodation platform, offshore electrical platforms, meteorological masts and the network of cables. Hence, there will be a further stage of regulatory control of the final form of the development prior to construction.

## **5 Associated development**

### DCLG Guidance on associated development

- 5.1 Pursuant to section 115 of the 2008 Act, development consent can be granted for the NSIP and associated development. The Secretary of State for Communities and Local Government has issued guidance on associated development<sup>1</sup> (the **Guidance**) which sets out its defining characteristics and illustrates the types of development that may qualify. Associated development must not be an aim in itself. In most cases, it is of a type normally brought

<sup>1</sup> Planning Act 2008: associated development applications for major infrastructure projects (Published by Department for Communities and Local Government, April 2013)

forward with the primary development<sup>2</sup> and must be subordinate to and necessary for the effective operation of the NSIP, and may include measures necessary to mitigate the effects of the primary development. It should be of a proportionate scale to the primary development. Examples given in the Guidance include grid connections (underground or overhead lines)<sup>3</sup>.

- 5.2 Work Nos. 2 to 12 in Part 1 of Schedule 1 of the Order include associated development for which consent is sought as part of the generating station NSIP. These works comprise:
- 5.2.1 the offshore electrical platforms (Work No. 2),
  - 5.2.2 subsea cables (Work Nos. 3, 4A and 4B),
  - 5.2.3 transition jointing pits (where the offshore cables connect to the onshore cables), onshore underground cables to the onshore project substation, via jointing pits and associated accesses (Work Nos. 4C to 7D),
  - 5.2.4 the onshore project substation and associated landscaping and grid connection (Work Nos. 8A to 10C),
  - 5.2.5 the overhead line replacement works (Work No. 11), and
  - 5.2.6 the permanent accesses from the A47 (Work No. 12) together with various miscellaneous matters.
- 5.3 All these elements clearly fit within the definition of associated development in that they are not an aim in themselves but are required to receive and export the electricity generated by the generating station, with suitable electrical transformation at both the offshore electrical platforms and the onshore project substation. This is reinforced by the fact that these elements will, after construction, be transferred to potentially two or more (depending on whether the phased approach is adopted) new OFTOs. After such transfer, the works will be owned and operated completely separately from the generating station under a transmission licence issued under section 6 of the Electricity Act 1989.
- 5.4 The works are required to be within the Order limits but the detailed design of the associated development will be a matter for the Applicant. As with the WTGs, the precise number of offshore electrical platforms is not fixed at this stage, but is limited to a maximum of two by the wording of Work No. 2 and by Requirement 2 (*Detailed offshore design parameters*).
- 5.5 Similarly, in terms of the onshore associated development, Work Nos. 8A, 10A and 11 and Requirement 16 (Detailed design parameters onshore) control the parameters for the onshore infrastructure. Work No. 8A dictates the site of the onshore project substation. The precise nature and layout of the equipment in the compound will depend on the turbine(s) selected, the electrical design and other matters. Requirement 16 requires detailed approval of the layout, scale and external appearance of the onshore project substation, which are to be in accordance with the principles of the design and access statement, and limits the maximum height and footprint of the onshore project substation. It also limits the extent of the fenced compound area for the onshore project substation. Detailed approval for landscaping of the connection works, including the onshore project substation, must be sought under Requirement 18 (*Provision of landscaping*).
- 5.6 Work No. 10A dictates the site of the extension to the existing National Grid substation at Necton. Requirement 16 specifies the maximum height of the external electrical equipment comprised in the extension, and restricts the size of the fenced compound area for the extension.
- 5.7 Work No. 11 dictates the location of the permanent replacement towers and the replacement overhead line corridor. Requirement 16 requires details of the overhead line replacement works to be approved by the local planning authority and restricts the maximum height and footprint of the permanent replacement towers. Article 4 (Limits of deviation) restricts the

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<sup>2</sup> Guidance para. 5

<sup>3</sup> Guidance Annex B

- maximum height of the replacement overhead line to no higher than 4m above the existing overhead line.
- 5.8 In accordance with *The Planning Act (Nationally Significant Infrastructure Projects) (Electric Lines) Order 2013*<sup>4</sup>, these replacement works do not meet the threshold for an NSIP under section 16 of the 2008 Act and are therefore included in the Application as associated development.
- 5.9 The proposed overhead line works are to replace existing overhead lines and pylons which are to be slightly realigned.
- 5.10 The replacement overhead line works fall within the exempt installations under Section 16, paragraph 3(c) of the 2008 Act as section 37(1) of the Electricity Act 1989 does not apply to it as a result of the *Overhead Lines (Exemption) (England and Wales) Regulations 2009*<sup>5</sup> (the **2009 Regulations**).
- 5.11 The 2009 Regulations state under Regulation 3 that Section 37(1) of the Electricity Act 1989 shall not apply in relation to the installation of an electric line which replaces an existing line whether or not it is installed in the same position as the existing line in question. This is subject to the following limitations as set out in Regulations 4 and 5:
- 5.11.1 the electric line does not have a nominal voltage greater than the nominal voltage of the existing line;
  - 5.11.2 any conditions contained in the section 37 consent applicable to the existing line are to be complied with in respect of the replacement line;
  - 5.11.3 the height above the surface of the ground of any support for the line will not exceed the height of the highest existing or replacement support by more than 10 per cent;
  - 5.11.4 the distance between any new small support (being a support not exceeding 10 metres in height) and the existing line will not exceed 30 metres and the distance between any other support and the existing line does not exceed 60 metres; and
  - 5.11.5 where the electric line is to be installed in a different position from the existing line, the existing line will be removed within 12 months of completion of the new line.
- 5.12 The above conditions are met.
- 5.13 In addition, where the electric line is to be installed in a different position from the existing line or where the height of the supports for the electric line is to be greater than the existing or where the installation is to be in a National Park or area of outstanding natural beauty, the exemption does not apply if there is likely to be a significant effect on the environment as determined by the local planning authority.
- 5.14 The only relevant exemption here is that whilst the electric line may be installed in a different position from the existing line, there is not likely to be a significant effect on the environment.

#### Onshore transmission works

- 5.15 The offshore array is located in the northern half of the former Zone 5 (East Anglia Zone) in the North Sea, which is being developed as two individual wind farms, both of which will require the appropriate statutory consents and approvals. The Project is the first to be proposed. Norfolk Boreas offshore wind farm (also owned and promoted by Vattenfall) comprises the next stage of development of this area. As with the Project, Norfolk Boreas will also connect to the National Grid onshore transmission network at Necton in Norfolk and accordingly will follow the same route and cable corridor as the Project.

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<sup>4</sup> 2013/1479

<sup>5</sup> 2009/640

- 5.16 It is anticipated that a development consent application for Norfolk Boreas will be submitted to the Secretary of State, including its respective export cables and onshore project substation, in 2019.
- 5.17 Therefore as well as the onshore cables (which will be laid in ducts) for the Project, onshore cable ducts to accommodate a future project within the northern half of the former Zone have also been included as associated development in the Order, following engagement and consultation with stakeholders, landowners and local authorities. If the ducting is so installed this would allow the onshore cables for Norfolk Boreas to be pulled through the ducting at a future date. This should reduce the duration of overall onshore cable laying activities, reduce overall land take and enables earlier restoration of the corridor to agricultural use (or other uses).
- 5.18 By laying the onshore ducting for the Project with onshore ducts for Norfolk Boreas in a single installation phase, the working width required for standard installation is up to 45 metres. A wider overall working width would be required if the cables were to be laid in two separate installation phases.
- 5.19 Accordingly it is considered that the Applicant's approach to defining a working width for the onshore cable corridor in the Order and the proposed width of acquisition powers is entirely proportionate to the nature and scale of the development to be authorised by the Order. As per the Guidance, it offers scope to reduce the onshore impacts of future projects (Norfolk Boreas) within the former Zone which the Secretary of State may reasonably expect to be the subject of development consent applications within less than two years of this development consent application for the Project.
- 5.20 The requirement to include the onshore cable ducts for future projects was included in the East Anglia ONE Offshore Wind Farm Order 2014 as associated development. This permits the onshore cable ducts for East Anglia THREE offshore wind farm to be laid at the same time (if practicable) as the laying of the onshore cables for East Anglia ONE. Therefore there is precedent for this approach. The principle of a degree of overcapacity to be provided in respect of associated transmission infrastructure is also supported by the Guidance on associated development.

#### Shared infrastructure

- 5.21 The Order also includes the option for shared infrastructure between the Project and Norfolk Boreas including through the sharing of an offshore electrical platform and onshore converter station (within the onshore project substation). Given the intention to construct two projects with a combined export capacity of 3.6GW, it is possible that a transmission solution comprising three High Voltage Direct Current (**HVDC**) links each rated at 1,200MW will be more cost-effective than alternative solutions involving either 4 x 900MW links or 2 x 1,800MW links (i.e. where each project has either one or two dedicated HVDC links). To allow for this possibility, the options for the Project include two 'classes' of offshore transmission infrastructure. The first class comprises transmission infrastructure which is required solely for export of electricity generated by the current Project; the second comprises transmission infrastructure the capacity of which will be used jointly by the Project and the future Norfolk Boreas project. A phasing option which allows for shared transmission infrastructure between the Project and Norfolk Boreas also, as per the Guidance, offers scope to reduce the offshore impacts of future projects within the former Zone which, as set out above, the Secretary of State may reasonably expect to be the subject of development consent applications within less than two years of this development consent application for the Project. Subject to the maximum parameters (see Schedule 3 below), the number of offshore electrical platforms and onshore converter stations, and (if relevant) whether certain elements of that infrastructure may be shared between Norfolk Vanguard and Norfolk Boreas, will depend on the final design of the Project.

## **6 Preliminary Provisions**

Articles 1 and 2 of the Order contain preliminary provisions.



*Article 1* (*Citation and commencement*) provides for the commencement and citation of the Order. It includes the date on which the Order comes into force, which may or may not be the date on which the Order is made.

*Article 2* (*Interpretation*) provides for the interpretation of the Order. Amongst other things, the definition of Order limits includes cross reference to the works plan and to the grid coordinates for the offshore Order limits contained in Schedule 1 of the Order. The Article also defines the offshore electrical platforms and foundations and other structures such as wind turbine generators and the meteorological masts.

In the Order 'commence' is defined as follows:

(a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for pre-construction surveys and monitoring approved under the deemed marine licences or

(b) in respect of any other works comprised in the authorised project, the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, temporary hard standing, and the temporary display of site notices or advertisements.

However, requirements are specifically included in Schedule 1, Part 3 of the Order to ensure that pre-commencement works consisting of site clearance and archaeological investigations are carried out in accordance with an ecological management plan and an archaeological written scheme of investigation as appropriate.

In the Order 'maintain' is defined to include inspect, upkeep, repair, adjust, and alter. It is also defined to include remove, reconstruct and replace, but only to the extent that this has been assessed in the environmental statement.

The deemed marine licences have a separate definition of 'maintain'. This also includes inspect, upkeep, repair, adjust, and alter. It only includes remove, reconstruct and replace in relation to the ancillary works in Part 2 of Schedule 1 and in relation to any component part of any wind turbine generator, offshore electrical substation, accommodation platform or meteorological mast described in Part 1 of Schedule 1 (authorised development) and only to the extent assessed in the environmental statement. It explicitly does not include the alteration, removal or replacement of foundations.

## 7 Operative Provisions

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

*Article 3* (*Development consent etc. granted by the Order*) would grant development consent for the authorised development within the Order limits, thereby authorising the construction of the main development, associated development and ancillary works. The authorised development means the development described in Part 1 of Schedule 1 (*Authorised development*). This includes further works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the work assessed by the environmental statement. Part 2 describes the ancillary works. These are defined together as the authorised project. In identifying the development authorised by this Order, Article 3 also makes provision for the offshore and onshore works authorised by the Order to be constructed within the Order limits. All the authorised development must be carried out in accordance with the requirements set out in Part 3 of Schedule 1 (*Requirements*). Article 3 is based on the Model Provisions and follows the approach taken for The East Anglia THREE Offshore Wind Farm Order 2017.

*Article 4* (*Limits of deviation*) would allow for the vertical deviation of the overhead line replacement works as part of Work No. 11, not exceeding 4 metres upwards or to any extent downwards. It is sought to provide the necessary (but proportionate degree of) flexibility when constructing that part of the authorised development, reducing the risk that the project as approved cannot later be implemented for unforeseen engineering or geological reasons.

An element of flexibility in downwards deviation is required so that any construction can reflect extant ground conditions when the works are carried out. A similar approach has been adopted on The National Grid (Hinkley Point C Connection Project) Order 2016 and The National Grid (Richborough Connection Project) Development Consent Order 2017. The Article is also based on the Model Provisions.

*Article 5* (*Power to construct and maintain authorised project*) makes provision for the construction and maintenance of the authorised project and follows the Model Provisions. It has been included in a number of offshore wind farm development consent orders including the recent East Anglia THREE Offshore Wind Farm Order 2017.

*Article 6* (*Benefit of the Order*) provides for the transfer of the whole or part of the benefit of the Order with the consent of the Secretary of State (the **SoS**), subject to certain exceptions. It also provides for the transfer of any of the deemed marine licences with the consent of the SoS. The requirement to obtain the SoS's consent is unnecessary in the

circumstances referred to in sub paragraph (11) of the Article. These circumstances include where the transferee or lessee is a holder of the Electricity Act 1989 and where the time limits for claims of compensation in respect of the acquisition of land or effects upon land as a consequence of the Order has elapsed.

It is anticipated that National Grid will undertake Work Nos. 10A to 11 in reliance on this sub-paragraph. National Grid is the holder of a transmission licence under the Electricity Act 1989 and therefore the Secretary of State's consent would not be required to transfer the benefit of the Order for these works to National Grid in order to allow National Grid to carry out these works.

Article 6 includes a procedure to be adopted when making an application to the SoS for consent. The essential elements of this procedure are as follows:

- a) before any application is made to the SoS the Undertaker shall consult with the SoS and the SoS will provide a response within four weeks of receipt of the notice;
- b) the SoS may not provide consent before consulting the MMO;
- c) the SoS shall determine an application for consent under this article within 8 weeks commencing on the date the application is received. This period can be extended where agreed in writing with the Undertaker;
- d) where the SoS is minded to refuse any application or fails to determine an application within 8 weeks of receipt then the Undertaker may refer the matter for determination under article 38 (*arbitration*);
- e) prior to any transfer or grant taking effect the Undertaker is required to notify in writing the SoS and so far as relevant the MMO and the relevant planning authorities. Sub paragraphs 14 to 16 of the Article stipulate the notification requirements that apply. In particular the notice must be received by the recipient a minimum of five days prior to the transfer taking effect.

The wording of Article 6 is based on a number of offshore wind development consent orders including the most recent East Anglia THREE Offshore Wind Farm Order 2017. However, in relation to the procedure for the Secretary of State consent, the drafting follows the approach taken for the draft Hornsea Three Offshore Wind Farm Order. In the absence of any other statutory procedure, the Applicant considers it is necessary to provide certainty on the procedure for the SoS's consent.

#### *Article 7*

*(Application and modification of legislative provisions)* dis-applies legislative provisions as they would apply but for this article. Article 7(1) provides for the modification of Regulation 6(1)(j) of the Hedgerows Regulations 1997 to provide that removal of any hedgerow to which the Regulations apply is permitted for carrying out or maintenance of development which has been authorised by a development consent order made pursuant to the 2008 Act. This approach was taken on The

East Anglia THREE Offshore Wind Farm Order 2017 in relation to the carrying out of development. However, Article 7(1) has been further amended to clarify that removal of hedgerows is also permitted for maintenance activities.

Article 6(3) dis-applies provisions of the Neighbourhood Planning Act 2017 (NPA 2017). This disapplication would provide that the temporary possession provisions in that enactment would not take effect at the expense of the temporary possession provisions contained in the Order. The provisions relating to temporary possession in the NPA 2017 have not yet come into force and regulations required to provide more detail on the operation of the regime have not yet been made.

Because of the uncertainty in relation to the detail around that regime, the Applicant has consulted on the long-standing process available under the Planning Act 2008. The Applicant additionally considers that if Parliament wished to apply NPA 2017 temporary possession regime to DCO projects it could have done so by effecting amendments to Part VII of the Planning Act 2008. It has not done so, and in the absence of the clarity this would provide, the Applicant proposes to proceed under the existing Planning Act 2008 procedure.

Paragraph 3 provides for the disapplication of various additional consents which would otherwise be required from the Environment Agency, internal drainage boards or lead local flood authorities under the Water Resources Act 1991 and the Land Drainage Act 1991. These are the requirements for consents to place structures on or over rivers under the Water Resources Act, the requirement for approval under flood defence and land drainage byelaws made or deemed to be made under the Water Resources Act, the prohibition on placing obstructions in waterways which are not main rivers under the Land Drainage Act and byelaws made under the Land Drainage Act regulating the use and obstruction of watercourses. The Order dis-applies this requirement for in-principle consent in order to ensure that the project can proceed and instead provides for approval of detailed plans in the protective provisions for the Environment Agency and the relevant drainage authorities in Schedule 16. This follows the approach taken in The Triton Knoll Electrical System Order 2016.

#### Article 8

*(Defence to proceedings in respect of statutory nuisance)* provides that no-one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out or maintenance of the authorised project and for which notice has been given under section 60 or consent obtained under section 61 or 65 of the Control of Pollution Act 1974 or if the noise is unavoidable. As stated in the Statement of Engagement submitted with the Application (Document 5.2), it is not considered that any properties will be affected beyond statutory nuisance thresholds, as mitigation measures will be used to control noise emissions. However,

the Applicant considers that this Article should be included in the event that proceedings are brought under Section 82 of the Environmental Protection Act 1990. This approach follows the Model Provisions and has been accepted in a number of offshore wind farm development consent orders including, most recently, The East Anglia THREE Offshore Wind Farm Order 2017. The Project comprises nationally significant infrastructure and as a result it is appropriate that the Project is protected.

*Article 9*

*(Street works)* confers authority on the undertaker to break up or open, tunnel or bore under, remove or use earth and materials in or under and place and maintain works under the streets specified in Schedule 2 *(Streets subject to street works)* within the Order limits and for the purposes of the authorised project. The authority given by this right is a statutory right for the purposes of sections 48(3) (streets, streets works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991. The undertaker needs the power to remove or use earth and materials in or under the streets in order to lay the cables for authorised project under the streets. This approach follows the Model Provisions and a similar approach has been taken on a number of offshore wind farm development consent orders, including The East Anglia ONE Offshore Wind Farm Order 2014. The Article closely follows the drafting of the more recent National Grid (Richborough Connection Project) Development Consent Order 2017.

*Article 10*

*(Public rights of way)* allows the temporary stopping up of public rights of way during the construction of the onshore part of the authorised development. It refers to Schedule 3 *(Public rights of way to be temporarily stopped up)* which lists those rights of way which may be stopped up temporarily. This is not based on the Model Provisions but does follow the approach taken in a number of offshore wind farm development consent orders, most recently in The East Anglia THREE Offshore Wind Farm Order 2017.

*Article 11*

*(Temporary stopping up of streets)* provides for the temporary stopping up, diversion or alteration of streets, subject to the consent of the local highway authority concerned which may attach reasonable conditions to any such consent. It refers to Schedule 4 *(Streets to be temporarily stopped up)* which lists those streets which may be stopped up temporarily. These are the streets which the Applicant anticipates it will need to temporarily stop up, alter or divert. Where the street is specified in Schedule 4, there is a requirement to consult the street authority, but there is no need to obtain its consent. In addition, Article 11 allows for the stopping up, alteration or diversion of any other street for the purposes of carrying out the authorised project, subject to the consent of the street authority which may attach reasonable conditions to any such consent. This Article broadly follows the approach taken in the Model Provisions, but more closely follows the approach taken in The East Anglia THREE Offshore Wind Farm Order 2017 and the Hornsea Two Offshore Wind Farm Order 2016.



- Article 12**      (*Access to works*) authorises accesses to and from public highways to be created at locations specified in Schedule 5 (*Access to works*) and for any other access, with the approval of the planning authority after consulting the highway authority. It therefore streamlines matters for the undertaker to require only one approval from the relevant authority. This Article broadly follows the approach taken in the Model Provisions, but more closely follows the approach taken in The East Anglia THREE Offshore Wind Farm Order 2017 and the Hornsea Two Offshore Wind Farm Order 2016.
- Article 13**      (*Agreements with street authorities*) authorises street authorities and the undertaker to enter into agreements relating to any temporary stopping up, alteration or diversion of a street authorised by the Order, or the carrying out of works in the streets referred to in Article 9 (*Street works*). This Article broadly follows the approach taken in the Model Provisions, but more closely follows the approach taken in The East Anglia THREE Offshore Wind Farm Order 2017 and the Hornsea Two Offshore Wind Farm Order 2016.
- Article 14**      (*Application of the 1991 Act*) provides that some provisions of the New Roads and Street Works Act 1991 apply to the carrying out of street works under Article 9 (*street works*) and the temporary stopping up, diversion or alteration of a street under Article 11 (*temporary stopping up of streets*). The relevant provisions are listed in sub-paragraph 2 of the article. Although this is not a Model Provision, comparable provisions are commonly included in Transport and Works Act Orders and have also been consented in the Hornsea Two Offshore Wind Farm Order 2016 and the Hornsea One Offshore Wind Farm Order 2014.
- Article 15**      (*Discharge of water and works to watercourses*) enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised project with the approval and superintendence (if provided) of the authority to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to other conditions. This element of the Article follows the Model Provisions and The East Anglia THREE Offshore Wind Farm Order 2017.
- The Article has been further modified to make it clear that the undertaker will have powers to alter watercourses, with the consent of the Environment Agency or the Internal Drainage Board or Norfolk County Council as appropriate.
- Article 16**      (*Authority to survey and investigate the land onshore*) confers upon the undertaker a power to survey and investigate land, including the ability to make trial holes, to use and leave apparatus on the land in question and to enter onto land. The Article also makes provision in relation to the payment of compensation and the notice period that must be given to owners and occupiers of land ahead of any surveys. The Article follows the Model Provisions but with modifications which follow the

approach taken in the East Anglia THREE Offshore Wind Farm Order 2017. In addition, the purpose for which a survey or investigation might be carried out also includes purposes required by the assessment carried out in the Environmental Statement for the authorised project.

*Article 17*

*(Removal of human remains)* enables the undertaker to remove human remains from the Order limits, and provides a process for notification and identification of the human remains as well as their re-internment or cremation. The undertaker would be required to pay the reasonable expenses associated with this process.

There is a non-designated old Quaker burial ground at North Walsham, where the potential for impacts has been minimised as far as possible. However, whilst it is not anticipated that any human remains will be encountered during construction works, it is possible that human remains could be found within close proximity to the old burial ground or within the wider Order Limits. This Article follows the Model Provisions, save that the Article applies to the entire Order Limits rather than a defined area. In this regard, the Article follows the approach taken on the Knottingley Power Plant Order 2015 where it also applied across the entirety of the Order Limits.

*Article 18*

*(Compulsory acquisition of land)* confers on the undertaker powers of compulsory acquisition of so much of the Order land as is required for the authorised project or to facilitate it, or is incidental to it. The article provides broad powers. It is considered necessary to make it clear in this provision that the whole of the Order land is potentially subject to powers of compulsory acquisition. In practice, however, pursuant to the other Articles, the powers of compulsory acquisition are limited, and for the great majority of the Order land, will be restricted to some combination of the acquisition of specified new rights (Article 20), and specified powers of temporary possession. The Article broadly follows the Model Provisions and follows the approach taken in the more recent East Anglia THREE Offshore Wind Farm Order 2017.

*Article 19*

*(Time limit for exercise of authority to acquire land compulsorily)* imposes a time limit of five years from the coming into force of the Order for the exercise of powers relating to the compulsory acquisition of land. This follows the Model Provisions.

*Article 20*

*(Compulsory acquisition of rights)* enables the undertaker to acquire rights over land, including new rights and existing rights if applicable. It also provides for the extinguishment or overriding of existing rights in land subject to the provisions of the Article. The Article is drafted so as to allow the undertaker flexibility to acquire new rights in the Order land if appropriate rather than outright acquisition under Article 18 *(Compulsory acquisition of land)*. This flexibility allows the undertaker, if it is possible, to reduce the areas required for freehold acquisition and rely on new, permanent rights instead where appropriate. This flexibility is appropriate to allow for continued negotiations with owners of Order Lands. It broadly follows the Model Provisions and is a provision that is

usual in Transport and Works Act Orders and hybrid bills. An example can be found in Article 19 of the Network Rail (Nuneaton North Chord Order) 2010 and Part 3 of Schedule 6 to the Crossrail Act 2008. It was also accepted in the East Anglia THREE Offshore Wind Farm Order 2017.

The Article is subject to Schedule 6, and states that in the case of land scheduled in Column 1 of that Schedule, the new rights that may be acquired are limited to the new rights (and restrictive covenants where relevant) set out in Column 2 of the Schedule. The great majority of the plots in the Order are restricted in this way.

Reference is also made to Schedule 7 (*Modification of compensation and compulsory purchase enactments for creation of new rights*) in the modifications of compulsory purchase legislation to apply appropriate provisions regarding material detriment etc. to the acquisition of new rights.

Further, it is to be noted that the undertaker is seeking to impose new restrictive covenants as scheduled in Schedule 6 (*Land in which only new rights etc. may be acquired*) to the Order for the protection of the onshore cables, jointing bays and any ducts that will be installed as part of the authorised development. Such protection has been given in Transport and Works Orders (notably relating to Docklands Light Railway) to protect the structure of subterranean development such as tunnels. It was also included in the East Anglia THREE Offshore Wind Farm Order 2017. It is considered that the nature of the authorised development is appropriate for such restrictive covenants and the predominantly agricultural nature of the Order lands would not be unduly burdened by the imposition of restrictive covenants, particularly on the basis that where restrictive covenants are being sought, a right of access for maintenance purposes over the same area is also being sought.

#### Article 21

(*Private rights*) applies to all private rights over land subject to compulsory acquisition under Article 18 (*Compulsory acquisition of land*) and Article 20 (*Compulsory acquisition of rights*). It provides that where land is compulsorily acquired, such private rights or restrictive covenants are suspended and unenforceable or (where the beneficiaries are notified by the undertaker), extinguished as far as their continuance would be inconsistent with the acquisition of the land; where new rights or restrictive covenants are acquired over land, private rights cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant; and where temporary possession of land is taken, private rights are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken for as long as the undertaker remains in lawful possession of the land.

Reference to section 152 of the 2008 Act is included in paragraph (4) to confirm that compensation payable under this Article is in accordance

with the principles for the payment of compensation for injurious affection to land that would ordinarily apply to schemes where statutory authority is relied upon and a claim under section 10 of the Compulsory Purchase Act 1965 arises. Such claims instead arise under section 152 of the 2008 Act rather than section 10 of the Compulsory Purchase Act 1965 as a result of the contents of section 152 of the 2008 Act. Paragraphs 6 and 7 allow the undertaker to provide notice to the contrary to the provisions of the Article, allowing the undertaker to confirm to the relevant owner of a dominant tenement that the rights that would by operation of this Article be suspended and unenforceable are not so suspended or unenforceable. The Article follows the Model Provisions and was included in the East Anglia THREE Offshore Wind Farm Order 2017.

*Article 22* *(Application of the Compulsory Purchase (Vesting Declarations) Act 1981)* provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981 and provides for that Act to have effect subject to certain modifications. It gives the undertaker the option to acquire land by this method rather than through the notice to treat procedure. This Article is based on the Model Provisions and has been updated to reflect the changes brought about by the Housing and Planning Act 2016. It follows the approach taken on the East Anglia THREE Offshore Wind Farm Order 2017. In addition the Article also reflects recent amendments to the Compulsory Purchase (Vesting Declarations) Act 1981, and provides that where the making of the Order is subject to a statutory challenge, the deadline for the exercise of compulsory acquisition powers under the Compulsory Purchase (Vesting Declarations) Act 1981 is increased by a period equivalent to the period beginning with the day the application is made, and ending on the day it is withdrawn or finally determined (or if shorter, one year).

*Article 23* *(Application of Part 1 of the Compulsory Purchase Act 1965)* applies Part 1 of the Compulsory Purchase Act 1965 to the Order with certain modifications in relation to section 125 of the 2008 Act. This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so that they are consistent with the terms of the Order and paragraph (4) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 26 or 27 of the Order. Whilst this is not a Model Provision, there are precedents for this in, for example, the High Speed Rail (London – West Midlands) Act 2017. This approach is also followed in The Wrexham Gas Fired Generating Station Order 2017.

In addition, the Article also reflects recent amendments to the Compulsory Purchase Act 1965 providing that where the making of the Order is subject to a statutory challenge, the deadline for the exercise of compulsory acquisition powers under the Compulsory Purchase Act

1965 is increased by a period equivalent to the period beginning with the day the application is made, and ending on the day it is withdrawn or finally determined (or if shorter, one year).

This Article also clarifies, by applying an amendment for the purposes of the Order to Schedule 2A of the Compulsory Purchase Act 1965, that the counter-notice provisions in that schedule that are available to landowners where part only of land is acquired compulsorily do not apply where the land has only been taken possession of under the temporary possession powers set out in Article 26 or Article 27.

*Article 24*

*(Acquisition of subsoil or airspace only)* authorises the undertaker to acquire the subsoil in any Order land without acquiring the whole of that land. In certain cases it may be necessary only to acquire a stratum of land below the surface and in the absence of this article the undertaker would be obliged to acquire the whole interest in the land. This is a Model Provision and there are precedents for this in, for example, the Glasgow Airport Rail Link Act 2007.

This article also authorises the undertaker to acquire interests in or rights over airspace a certain height above ground. This is particularly relevant in the context of overhead electricity lines. An example can be found at Article 28 of the National Grid (North London Reinforcement Project) Order 2014.

*Article 25*

*(Rights under or over streets)* provides that the undertaker may use a street within the Order limits for the authorised project without being required to acquire any part of the street or any easement or right in the street. Provision is made for the payment of compensation to an owner or occupier of land where their interest in land is not acquired and who suffers loss as a result. The Article follows the Model Provisions and the approach taken in the East Anglia THREE Offshore Wind Farm Order 2017.

*Article 26*

*(Temporary use of land for carrying out the authorised project)* will allow the undertaker to take temporary possession of the land included in Schedule 8 *(Land of which temporary possession may be taken)*.

The Article also provides for other Order land in respect of which notice of entry has not yet been served under Section 11 of the Compulsory Purchase Act 1965 and no vesting declaration has been made under the Compulsory Purchase (Vesting Declarations) Act 1981 to be taken possession of and used, temporarily, for certain specified purposes. It also allows for new rights in land to be acquired compulsorily after temporary possession has been taken; and for permanent works to be constructed whilst temporary possession notices are in place but before permanent rights have been acquired. This broadly follows the Model Provisions but has been modified in line with The East Anglia THREE Offshore Wind Farm Order 2017, and allows greater flexibility in the event that, following further design work, it is either decided by the undertaker or agreed with the relevant landowner that temporary occupation rather than permanent acquisition is appropriate. A benefit



of structuring the Order powers in this way is also to limit the amount of land that need be ultimately acquired, or over which new rights are acquired, from landowners. As works may be constructed prior to permanent acquisition of land, permanent land interests for can be acquired for the scheme "as built", with no need to account for uncertainties in as-built construction in terms of land acquired.

Article 26 provides that powers to take possession of land temporarily, if land is specified in Schedule 8 (*Land of which temporary possession may be taken*), may be used only for the purposes set out in column 3 of Schedule 8.

These temporary powers are "overlaid" onto many of the plots that are also scheduled for the acquisition of permanent new rights.

For plots that are scheduled for temporary possession in Schedule 8, paragraph 26(8)(a) excludes freehold compulsory acquisition, but still permits the acquisition of permanent rights under Article 20 (as set out in Schedule 6). In this way, the power in Article 18 is further limited.

Paragraph 26(8)(b) permits the acquisition of subsoil or airspace rights in any of the land subject to Article 18 or Article 20. This provision could potentially allow the undertaker to acquire additional rights to those set out in Schedule 6, in case a need for a subsoil or airspace right becomes apparent that is currently unforeseen. As the great majority of the land to be acquired under the Order comprises new rights for an underground cable and related works, the Applicant anticipates that this provision is unlikely to be used, but could be relied on in rare circumstances to assist the delivery of the nationally significant infrastructure project. The Article is based on the Model Provisions but has been modified. It follows the approach accepted in the East Anglia THREE Offshore Wind Farm Order 2017, and which is commonly used on Transport and Works Orders. A similar provision was included in the Network Rail (Ordsall Chord) Order 2015.

The power to temporarily possess "any other Order land" (in respect of which notice of entry has not yet been served under Section 11 of the Compulsory Purchase Act 1965 and no vesting declaration has been made under the Compulsory Purchase (Vesting Declarations) Act 1981), in addition to the land specified in Schedule 8, is unlikely to be exercised for the Project, as all of the Order land, save for the freehold plots (Plots 40/13, 40/15, 40/17, 40/18, 40/19, 40/21, 40/22, 40/24, 40/25, 40/29, 40/30, 41/02, 41/04, 41/06, 41/19, 41/20, 41/21, 41/26, 41/29, 41/31, 41/34, 41/35, 41/36, 41/37, 41/38 and 42/01) is included in Schedule 8 for some purpose (either for access, use for temporary construction compounds, or for purposes of construction of the authorised project). The Article clarifies that unless permanent interests have been acquired in any land that the undertaker has taken temporary possession of, the undertaker must remove any temporary works and restore the land to the reasonable satisfaction of the owners of the land, but is not required to remove certain works such as drainage works or road surfacing.

In all cases where powers of temporary possession are exercised, validly evidenced compensation must be paid to the landowner and any occupiers for loss or damage arising from their exercise where claimed.

*Article 27*

*(Temporary use of land for maintaining authorised project)* provides that the undertaker may take temporary possession of land within the Order limits required for the purpose of maintaining the authorised project, and to construct such temporary works as may be reasonably necessary for that purpose for a period of five years from the date on which that part of the authorised development is first used. Provision is made for notice and compensation. This power does not apply with respect to houses, gardens or any other buildings for the time being occupied. Provision is also made for taking temporary possession without notice, or at a shorter notice than is usually permitted in an emergency. This is based on, but modifies, the Model Provisions but does follow the approach taken on The East Anglia THREE Offshore Wind Farm Order 2017.

*Article 28*

*(Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession)* is included in relation to the works to overhead lines, on land in which National Grid owns apparatus. It provides that where National Grid apparatus is removed from land that the undertaker has only taken temporary possession of (and not, necessarily, compulsorily acquired a permanent interest in land), any private rights and restrictive covenants in relation to that apparatus can be permanently extinguished, unless the undertaker serves notice to the contrary.

This is intended to allow the Applicant, if appropriate, to remove redundant apparatus owned by National Grid where that or other apparatus is altered or relocated, and to facilitate the relevant land being burdened only with interests that are appropriate to the new or altered apparatus. This is not a Model Provision but follows the approach taken on other connection projects including The National Grid (Richborough Connection Project) Development Consent Order 2017.

*Article 29*

*(Statutory undertakers)* authorises the undertaker to acquire land and new rights in land belonging to statutory undertakers as shown on the land plans within the limits of the land to be acquired or used and described in the book of reference. This is a Model Provision which has been modified in accordance with the approach taken on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.

*Article 30*

*(Recovery of costs of new connections)* provides for compensation to owners or occupiers of property to which the apparatus of a public utility undertaker was connected, where that apparatus is removed in accordance with Article 29 *(Statutory undertakers)*. This is a Model Provision and has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore

Wind Farm Order 2017.

- Article 31* *(Operation of generating station)* authorises specifically the undertaker to operate the authorised project in accordance with the provisions of this Order or an agreement made under this Order. This aspect is included pursuant to section 140 of the 2008 Act. Although not a Model Provision, this Article has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.
- Article 32* *(Deemed licences under the Marine and Coastal Access Act 2009)* provides for four deemed marine licences, the terms of which are set out in Part 1 of Schedules 9 to 12, required for the deposit at sea within the Order limits of the specified substances and articles and the construction of works in or over the sea and/or on or under the seabed. As explained above, the approach of splitting the deemed marine licences into four separate licences is to provide for a situation where generation or transmission assets will be held by different companies (including OFTOs) post-construction. Although not a Model Provision, this Article has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.
- Article 33* *(Application of landlord and tenant law)* overrides the application of landlord and tenant law in so far as it may prejudice the operation of any agreement for leasing the whole or part of the authorised project or the right to operate the same and any agreement for the construction, maintenance, use or operation of the authorised project or any part of it entered into by the undertaker. This is a Model Provision and has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.
- Article 34* *(Operational land for the purposes of the 1990 Act)* provides that for the purposes of section 264(3) of the Town and Country Planning Act 1990 the development consent granted by the Order shall be treated as a specific planning permission. This is a Model Provision and has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.
- Article 35* *(Felling or lopping of trees and removal of hedgerows)* enables the undertaker to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised project and danger to the authorised project. Provision is included for the payment of compensation for loss and damage. It also enables the undertaker to remove the hedgerows and important hedgerows that are within the Order limits and specified in Schedule 13 (*Hedgerows*). The Article broadly follows the Model Provisions but more closely follows the approach in The East Anglia THREE Offshore Wind Farm Order 2017.

- Article 36** (*Trees subject to tree preservation orders*) enables the undertaker to fell or lop the roots of any tree which is subject to a tree preservation order to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised project. Compensation is payable if loss or damage is caused.
- The Article is a Model Provision save that it applies generally to any tree subject to a tree preservation order made before and after the date of the Order coming into effect and either within or overhanging the Order limits. The approach follows that taken on the Hornsea Two Offshore Wind Farm Order 2016.
- Article 37** (*Certification of plans etc*) requires the undertaker to submit copies of the documents, plans and sections referred to in the Order to the decision maker, for certification as true copies following the making of the Order. This is a Model Provision and has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.
- Article 38** (*Arbitration*) makes provision for any dispute arising under the provisions of the Order and, unless otherwise provided for, to be settled by arbitration. These will include circumstances where the agreement of the relevant local authority is needed but cannot be reached. It will not apply to any appeals against approval or non-determination of requirements. The concept derives from the Model Provisions but changes, including the addition of a new schedule, have been made to provide a more bespoke and relevant arbitration process. This follows the approach which has been taken on the draft Hornsea Three Offshore Wind Farm Order.
- Article 39** (*Procedure in relation to certain approvals etc.*) provides a mechanism for securing any consent or approval from a consenting body required by the provisions of the Order. It applies Schedule 15 (*Procedure for discharge of Requirements*), which sets out the procedure for the discharge of requirements contained in Part 2 of Schedule 1. This is not a Model Provision but a similar approach was followed on the Hinkley Point C (Nuclear Generating Station) Order 2013.
- Article 40** (*Abatement of works abandoned or decayed*) authorises the Secretary of State to issue a written notice to the undertaker requiring the repair, restoration or removal of Works No. 1(a) to 1(d) or Work No. 2 where they have been abandoned or allowed to fall into decay. This power is stated to be without prejudice to any notice served under section 105(2) of the Energy Act 2004 requiring the submission of a decommissioning scheme. Although not a Model Provision it has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.
- Article 41** (*Saving provisions for Trinity House*) is a standard provision included in Transport and Works Orders for offshore wind farms, including that for

Scarweather Sands. It is in the Model Provisions for Harbours and has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.

*Article 42* (*Crown rights*) protects the Crown's position in relation to its own estates, rights, powers, privileges, authorities and exemptions. The Crown's written consent is required where any land, hereditaments or rights of the Crown are to be taken, used, entered or interfered with as a result of granting of the Order, although there is no conditionality in respect of third party interests in Crown land. Although not a Model Provision, the approach taken follows the approach for The East Anglia THREE Offshore Wind Farm Order 2017.

*Article 43* (*Protective provisions*) gives effect to the protective provisions in Schedule 16 (*Protective provisions*).

## **8 Schedules**

*Schedule 1* (*Authorised Project*) Part 1 of Schedule 1 specifies the authorised development comprising the scheduled works. The ancillary works are set out in Part 2.

Part 3 sets out certain requirements that the undertaker must meet in relation to the construction and operation of the authorised project. These requirements take a similar form to planning conditions.

With regard to the structure of the onshore requirements, it should be noted that the principles informing the proposed onshore mitigation are largely set out in a number of outline documents submitted with the Application.

Requirement 1 (*Time limits*) specifies the time limit for commencing the authorised development as 5 years from the date of the Order, as provided for in Regulation 3 of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010.

Requirements 2 to 11 (*Detailed offshore design parameters*) set out the detailed design parameters within which the authorised development must be constructed. Requirements 2 and 3 deal with the dimensions and other characteristics of WTGs. Requirement 4 limits the dimensions of the offshore electrical platforms, accommodation platforms and meteorological masts. Requirement 5 limits the total length of export, array and interconnector cables and specifies the maximum amounts of cable protection. Requirements 6 to 11 restrict the dimensions of the different foundation types and Requirement 11 limits the amount of scour protection for the various structures. The purpose of these various restrictions is to ensure that the authorised development is restricted to that which has been assessed in the Environmental Statement.

Requirement 12 (*Aviation safety*) provides that lighting must be used as



determined necessary for aviation safety. It also requires notification of certain information to the Defence Infrastructure Organisation at least 14 days prior to commencement of the offshore works, on completion of the offshore works and of any changes to the information supplied.

Requirement 13 (*Ministry of Defence surveillance operations*) has been included to ensure appropriate mitigation to prevent or remove any adverse effects which the operation of the authorised development will have on the air defence radar at Remote Radar Head (RRH) Trimingham and the Ministry of Defence's air surveillance and control operations.

Requirement 14 (*Offshore decommissioning*) requires a decommissioning programme to be agreed with the Secretary of State prior to the commencement of the offshore works and replicates the wording used on consents for offshore wind farms granted under the Electricity Act 1989 (and now the 2008 Act) following the relevant provisions of the Energy Act 2004 coming into force.

Requirement 15 (*Stages of authorised development onshore*) requires confirmation of whether the onshore works will be constructed in a single operation to pull the cables through the ducts and construct the onshore project substation, or whether the onshore works will be constructed in two phases of two separate operations to pull the cables through the ducts and two separate onshore project substation construction operations. This will be dependent upon the number of offshore phases.

Requirement 15 also requires a written scheme setting out all the stages of the onshore transmission works to be approved by the relevant planning authority before commencement of any onshore works.

The Applicant will also have sufficient information at the time of submission of this written scheme to confirm whether it will proceed with Work No. 7A or 7B and Work No. 7C or 7D. The Applicant must then implement the written scheme as approved.

Requirement 16 (*Detailed design parameters onshore*) requires approval of details of the proposed works at the onshore project substation, for the extension to the National Grid substation at Necton and the overhead line replacement works by the relevant planning authority. It specifies parameters in terms of the maximum size of the equipment and buildings for the onshore project substation and the extension substation works and the maximum height of the overhead line replacement pylons. In addition, this requirement commits the Applicant to use trenchless installation techniques to install the cables in the locations specified in the Requirement including at certain rivers and wildlife sites. Taken together these restrictions ensure that the impact of the onshore works is minimised in line with the assessment and commitments contained in the Application.

Finally the requirement commits the undertaker to only installing a

maximum of two ducts at the landfall.

Requirement 17 (*Landfall method statement*) requires approval of a method statement for the construction of the works at the landfall. It specifies that the method statement must include measures for horizontal directional drilling below the coastal shore platform and cliff base at the landfall. This commitment ensures that the impact of the landfall works is minimised in line with the assessment and commitments contained in the Application.

Requirement 18 (*Provision of landscaping*) provides that the relevant stage of the transmission works shall not commence until a landscaping management scheme for that stage (which accords with the outline landscape and ecological management strategy) has been submitted and approved by the relevant planning authority. The scheme must be implemented as approved.

Requirement 19 (*Implementation and maintenance of landscaping*) requires the undertaker to implement the approved landscaping management schemes and to replace trees or shrubs which die along the cable route within five years of planting.

Requirement 20 (*Code of construction practice*) provides that the relevant stage of the transmission works shall not commence until a code of construction practice for that stage (which accords with the outline code of construction practice) has been submitted and approved by the relevant planning authority. The code must be implemented as approved. The code includes details on matters such as fencing, external lighting and control of artificial light, contaminated land and groundwater, construction noise and surface water and drainage.

Requirement 21 (*Traffic*) requires that the relevant stage of the transmission works shall not commence until a traffic management plan (in accordance with the outline traffic management plan), a travel plan (in accordance with the outline travel plan) and an access management plan (in accordance with the outline access management plan) for that stage have been submitted to and approved by the relevant highway authority. The plans must be implemented on commencement of the relevant stage of transmission works.

Requirement 22 (*Highway accesses*) requires that the access management plan submitted for approval under requirement 21 (*traffic*) includes details of any permanent or temporary means of access to a highway, or any alteration to an existing means of access, by the relevant planning authority in consultation with the relevant highway authority.

Requirement 23 (*Archaeological written scheme of investigation*) requires that the relevant stage of the transmission works shall not commence until an archaeological written scheme of investigation for that stage (which accords with the outline written scheme of investigation (onshore)) has been submitted to and approved by the relevant planning authority, following consultation with Historic England and Norfolk County Council. Construction works must be undertaken in

accordance with the approved scheme.

Requirement 24 (*Ecological management plan*) requires that the relevant stage of the transmission works shall not commence until an ecological management plan for that stage (which accords with the outline landscape and ecological management strategy as appropriate for that stage) has been approved by the relevant planning authority, following consultation with Natural England. Construction works must be undertaken in accordance with the approved scheme.

Requirement 25 (*Watercourse crossings*) requires that no stage of the transmission works involving crossing or diverting of a main river or watercourse shall commence until a scheme and programme for that crossing, diversion and subsequent reinstatement has been approved by the relevant planning authority, following consultation with Natural England. Works to cross, divert and then reinstate the main river or watercourse must then be undertaken in accordance with the approved scheme and programme. During construction, all ditches, watercourses, field drainage systems and culverts are to be maintained to ensure that the flow of water and drainage are not impaired.

Requirement 26 (*Construction hours*) provides for construction hours for the transmission works on specified days, with none on Sundays or bank holidays, for the relevant works, with exceptions for certain continuous operations, construction works at the landfall and requiring trenchless installation techniques, fit out works at the onshore project substation, commissioning or outage works for the National Grid substation extension works and overhead line modification works, delivery of abnormal loads, daily start up and shut down, electrical installation, works requiring temporary road closures, emergency works and other cases agreed with the relevant planning authority.

Requirement 27 (*Control of noise during operational phase*) limits the noise rating levels during operation of the onshore project substation, and requires a scheme for monitoring compliance with the noise rating levels to be submitted to and approved by the relevant planning authority.

Requirement 28 (*European protected species onshore*) provides that no stage of the transmission works shall be commenced until a final pre-construction survey has been carried out for that stage to establish whether there are any European protected species present, or likely to be affected by the works. If so the requirement provides that the relevant stage of the works shall not commence until a scheme for protection and mitigation has been approved, which shall be implemented as approved.

Requirement 29 (*Onshore decommissioning*) provides that within six months of the permanent cessation of commercial operation of the onshore transmission works, an onshore decommissioning plan must be submitted to the relevant planning authority for approval. The plan must then be implemented as approved.

Requirement 30 (*Requirement for written approval*) provides that where

any requirement requires the approval of the Secretary of State or the relevant planning authority such approval shall be in writing.

Requirement 31 (*Amendments to approved details*) provides that any details approved pursuant to any requirement shall be taken to include any amended details which are subsequently approved, provided that any amendments to or deviations from the approved details are in accordance with the principles set out in the Environmental Statement.

- |                   |   |
|-------------------|---|
| <i>Schedule 2</i> | <i>(Streets subject to street works)</i> sets out those streets which are to be the subject of street works.  |
| <i>Schedule 3</i> | <i>(Public rights of way to be temporarily stopped up)</i> sets out those public rights of way which are to be temporarily stopped up.  |
| <i>Schedule 4</i> | <i>(Streets to be stopped up)</i> sets out those streets which are to be stopped up, altered or diverted.   |
| <i>Schedule 5</i> | <i>(Access to works)</i> sets out details of access points to the Works.  |
| <i>Schedule 6</i> | <i>(Land in which only new rights etc may be acquired)</i> sets out details of such land over which new rights may be acquired. It sets out the purposes for acquisition of new rights over specified plots. In accordance with the Guidance issued by the Secretary of State, it specifies rights that apply to the relevant plots set out in the Book of Reference, and also details, where relevant, the restrictive covenants that apply to the relevant plots to protect the installed cables. |
| <i>Schedule 7</i> | <i>(Modification of compensation and compulsory purchase enactments for creation of new rights)</i> sets out changes to the operation of the legislation relating to compulsory purchase, principally the material detriment provisions contained in Section A of the Compulsory Purchase Act 1965.   |
| <i>Schedule 8</i> | <i>(Land of which temporary possession may be taken)</i> sets out details of such land that may be occupied under temporary powers.   |
| <i>Schedule 9</i> | <i>(Deemed licence under Marine and Coastal Access Act 2009 – generation assets (licence 1 – phase 1))</i> sets out the deemed licence for phase 1 of the generation assets within the authorised project.  |

Standard provisions and structure for deemed marine licences have been developed and included within Orders granted under the 2008 Act. The draft deemed licences comprise two generation licences and two transmission licences within this Order and have been developed by the Applicant in discussion with the MMO, Maritime and Coastguard Agency and Trinity House.

The licences are deliberately drafted to be standalone documents. This reflects the fact that they will have a wide distribution to contractors and agents, being an audience that may be confused by cross references to the main Order. Also, they are documents which, based on past

experience, are likely to be varied from time to time. Such variations will be much easier to follow if the licences have been prepared on a standalone basis. As a result, there is intentional repetition from the main Order of various definitions and the description of the authorised works. Where definitions from the main Order are not included, this is because such definitions only relate to the onshore transmission works and are therefore not relevant for the licences.

Unless otherwise stated, the provisions below relate to all of the deemed marine licences, although condition numbering varies between the deemed marine licences for the generation assets and transmission assets. A table which compares the numbering across the generation and transmission licences is included at Schedule 2 for ease of reference.

### **Part 1 – Interpretation**

Paragraphs 1-4 (*Interpretation*) provides interpretation of certain words and phrases used in the licence and contact details for key organisations relevant to the content of the licence. Many of the definitions (including the different types of foundations and other structures such as wind turbine generators and the meteorological masts) are identical to those used in the main Order.

### **Part 2 – Licensed Marine Activities – General**

Paragraph 1 confirms that the deemed marine licence shall remain in force until the scheme has been decommissioned.

Paragraph 2 confirms that section 72(7) (*Variation, suspension, revocation and transfer*) of the 2009 Act is dis-applied in relation to transfer of the deemed marine licences. Section 72(7) permits the licensing authority to transfer a marine licence to another person. Section 72(8) provides that "*a licence may not be transferred except in accordance with subsection 7*". Article 6 (*Benefit of the Order*) however provides for the transfer to take place in a different way to section 72(7). Since Article 6 is different from the precise wording of section 72(7) of the 2009 Act it is necessary to dis-apply section 72(7) in those limited circumstances to enable Article 6 to operate. Without such a disapplication, Article 6 might be claimed to be inoperative because of adopting a different wording from section 72(7).

Paragraph 3 confirms that where any condition requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under the licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved by the MMO.

Paragraph 4 notes that any amendments to approved details must fall within what has been assessed in the Environmental Statement.

Paragraph 5 sets out the substances or articles authorised for deposit at sea.

Paragraph 6 sets out the grid coordinates for those works within the



deemed marine licence.

### **Part 3 – Details of Licensed Marine Activities**

Paragraphs 1-2 specify the licensable marine activities which are authorised by the licence in connection with the construction and operation of the generating station (generation assets licences) and offshore associated development (transmission assets). The section deliberately repeats in full the description of the relevant works from Part 1 of Schedule 1. Reference is also included to disposal of material as a result of preparation works for construction of the generating station and associated development (as appropriate).

### **Part 4 – Conditions**

Conditions 1 to 7 (*Design parameters*) repeat the design parameters from requirements 2 to 10 of Part 3 of Schedule 1. This has the effect of putting beyond doubt the fact that when considering approvals under the licence, the details of proposed works must comply with these constraints under the deemed marine licence as well as under the Order.

Condition 8 (*Phasing of the authorised scheme*) restates the maximum numbers of wind turbines and other infrastructure for the authorised scheme. It also requires the undertaker to notify the MMO regarding whether the authorised scheme will be constructed in one or two offshore phases.

Condition 9 (*Notifications and inspections*) provides for a system of supplying copies of the licence to agents and contractors, restricting the use of contractors and vessels to those notified to the MMO, and publicising commencement and progress of the licensed activities.

Conditions 10-11 (*Aids to navigation and Colouring of Structures*) provide for various matters to aid navigation in the vicinity of the authorised scheme, including the provision of various navigation aids and notices to mariners; the ongoing availability of the aids to navigation; notification of the progress of works to Trinity House and the MMO and the colouring of structures. These are all standard provisions from previous Transport and Works Act Orders and Electricity Act consents for offshore wind farms and have been incorporated into recently granted Orders under the 2008 Act.

Condition 12 (*Chemicals, drilling and debris*) restricts the use of chemicals and other substances and provides for the disposal of certain drilling arisings and the monitoring of construction materials so as to identify those which may accidentally fall into the sea, which shall then be investigated and, where identified, recovered.

Condition 13 (*Force majeure*) provides for the notification of deposits made in an emergency.

Condition 14 (*Pre-construction plans and documentation*) provides for the submission for approval, before the commencement of licensed activities, of a plan showing the proposed location, dimensions and

choice of foundation of all elements of the authorised scheme to ensure that the licensed activities conform with the description of Work No. 1 and the design parameters in conditions 1 to 7. It also provides for submission for approval of a construction programme and monitoring plan, a construction method statement, a project environmental management plan, a scour protection management and cable protection plan, a marine mammal mitigation protocol (where driven or part driven foundations are proposed), a cable specification, installation and monitoring plan, an archaeological written scheme of investigation, a mitigation scheme for habitats of principal importance, an offshore operations and maintenance plan, an aids to navigation management plan, an ornithological monitoring plan and a site integrity plan.

Condition 15 requires any archaeological reports produced in accordance with Condition 14 to be agreed with Historic England. It also requires each of the documents for approval under Condition 14 to be submitted for approval at least 4 months prior to the intended start of construction, and that each approved document be complied with. Finally, it states that no part of the authorised scheme may commence until the MMO has confirmed that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate contained within MGN543.

Condition 16 (*Post-construction plans and documents*) requires a swath bathymetric survey to be undertaken in the areas where construction works were carried out and for the data and survey reports to be provided to the MCA and UKHO.

Condition 17 (*Reporting of engaged agents, contractors and vessels*) requires the undertaker to provide to the MMO details of agents and contractors engaged to carry out the licensed activities, and a weekly update as to which vessels are being used during construction.

Condition 18 (*Pre-construction monitoring*) specifies the manner in which the undertaker shall discharge its obligation under Condition 14 to put forward proposals for pre-construction surveys/monitoring, and provides an indicative list of the expected pre-construction surveys.

Condition 19 (*Construction monitoring*) specifies the manner in which the undertaker shall discharge its obligation under Condition 14 to put forward proposals for construction surveys/monitoring, and specifically requires certain noise monitoring. It provides for the MMO to require further noise monitoring depending on the results.

Condition 20 (*Post construction*) specifies the manner in which the undertaker shall discharge its obligation under Condition 14 to put forward proposals for post-construction surveys/monitoring, and provides an indicative list of the expected post-construction surveys. The transmission licences do not require construction monitoring to include marine traffic monitoring or ornithological monitoring.

Condition 21 (*Reporting of impact pile driving*) provides that the undertaker must provide information of the expected location, start and

end dates of impact pile driving to the MMO.

*Schedule 10 (Deemed licence under Marine and Coastal Access Act 2009 – generation assets (licence 2 – phase 2))*

This deemed marine licence relates to phase 2 of the generation assets only and its provisions duplicate the generation assets deemed marine licence at Schedule 9 of the draft Order.

*Schedule 11 (Deemed licence under Marine and Coastal Access Act 2009 – transmission assets (licence 1 – phase 1))*

This deemed marine licence relates to phase 1 of the transmission assets only and its provisions largely duplicate the generation assets deemed marine licence at Schedule 9 of the draft Order.

*Schedule 12 (Deemed licence under Marine and Coastal Access Act 2009 – transmission assets (licence 2 – phase 2))*

This deemed marine licence relates to phase 2 of the transmission assets only and its provisions largely duplicate the transmission assets deemed marine licence at Schedule 9 of the Order.

*Schedule 13 (Hedgerows) sets out those hedgerows (Part 1) and important hedgerows (Part 2) to be removed.*

*Schedule 14 (Arbitration rules) sets out further details of the arbitration process. The approach set out in Schedule 14 is not found in any previous development consent orders, but the applicant considers that it is important to provide a robust process within which substantive differences between the parties can be resolved. The intention is to achieve a fair, impartial and binding award on substantive differences between the parties; these changes have been made to provide a more bespoke and relevant arbitration process for a project of this nature - for instance, the intention is to receive determination within 4 months from the date the arbitrator is first appointed, which allows disputes to be resolved quickly. With the wider context, as exemplified in the National Policy Statements, surrounding the need for new power projects, it is necessary that disputes are resolved promptly to enable the Authorised Project to be delivered in as timely a manner as possible.*

Schedule 14 refers to the person who commenced the arbitration as the Claimant and the other party as the Respondent.

The timetable for the process is as follows:

(a) Within 14 days of the Arbitrator being appointed the Claimant shall serve on the Respondent and the Arbitrator a statement of case and all supporting evidence to support the claim.

(b) Within 14 days of receipt of the Claimant's statement of case and supporting evidence the Respondent will serve a statement of defence and all supporting evidence to support its defence, together with any

objections to the Claimant's documentation.

(c) Within 7 days of receipt of the Respondent's documentation the Claimant may make a Statement of Reply.

The costs of the arbitration will be awarded by the arbitrator and the principle that costs will follow the event will be adopted. Costs will include the arbitrator's costs together with the reasonable legal fees and other costs incurred by the other party.

*Schedule 15*      *(Procedure for discharge of requirements)* sets out the process to be followed in relation to applications made to a discharging authority for any agreement or approval required by a requirement in the Order.

*Schedule 16*      *(Protective provisions)* sets out protective provisions for statutory undertakers affected by the authorised development. The protective provisions are for the benefit of general gas, electricity, water and sewerage undertakers affected by the authorised development (Part 1), National Grid (Part 2), Cadent Gas (Part 3), Operators of Electronic Communications Code Networks (Part 4), Network Rail (Part 5), and Anglian Water (Part 6). The Environment Agency and drainage authorities also have the benefit of protective provisions at Part 7 as a result of the disapplication of certain legislative provisions (*Article 7 - Application and modification of legislative provisions*) in relation to works within watercourses.

**Schedule 1**

**Table of comparison with the Model Provisions**

<b>Article in the draft DCO</b>	<b>Similarity to General Model Provisions (Article number in the Model Provisions)</b>	<b>Precedence in other DCOs</b>
1 Citation and commencement	No	Yes – The East Anglia THREE Offshore Wind Farm Order 2017
2 Interpretation	1 – Yes, but with project specific differences (the Model provision has citation, commencement and interpretation included all under article 1).	Some similarities with The East Anglia THREE Offshore Wind Farm Order 2017, however with necessary project specific definitions
3 Development consent etc. granted by the Order	2 – Yes, but with necessary project specific differences to make clear the distinction between the offshore Order limits and the onshore Order limits and their associated work packages.	Yes – The East Anglia THREE Offshore Wind Farm Order 2017
4 Limits of deviation	6 – Yes (Model Provisions for Railways). This adopts the approach used for limits of deviation in relation to the overhead line replacement works	Yes – The National Grid (Hinkley Point C Connection Project) Order 2016 and The National Grid (Richborough Connection Project) Order 2017
5 Power to construct and maintain authorised project	3 - Yes	Yes – The East Anglia THREE Offshore Wind Farm Order 2017
6 Benefit of the Order	4 and 5 – Yes, but with necessary project specific differences added to address the position in relation to the Deemed Marine Licences and to make clear where the Secretary of State's (SoS) consent may not be necessary or required (for instance, where the transferee or lessee is a holder of an Electricity Act 1989	Yes – The East Anglia THREE Offshore Wind Farm Order 2017 and, in part with regards to the process for the SoS consent, the draft Hornsea Project Three Offshore Wind Farm Order.



Article in the draft DCO	Similarity to General Model Provisions (Article number in the Model Provisions)	Precedence in other DCOs
	licence).	
7 Application and modification of legislative provisions	6 – Yes, but with necessary project specific differences in relation to the Neighbourhood Planning Act 2017 and land and drainage consents.	Yes – The East Anglia THREE Offshore Wind Farm Order 2017 in relation to the Hedgerow Regulations 1997, and The Triton Knoll Electrical System Order 2016 in relation to Land Drainage Consents and consents under the Water Resources Act 1991
8 Defence to proceedings in respect of statutory nuisance	7 – Yes. The article is drafted partially based on the model provision and partially based on the East Anglia THREE Offshore Wind Farm Order 2017.	Yes – The East Anglia THREE Offshore Wind Farm Order 2017
9 Street works	8 - Yes	Yes – in part on The East Anglia ONE Offshore Wind Farm Order 2014, but more recently (and more closely) on The National Grid (Richborough Connection Project) Order 2017
10 Public rights of way	10 – This article is not a model provision, but the concept has precedence from the East Anglia Three Offshore Wind Farm Order 2017.	Yes – The East Anglia THREE Offshore Wind Farm Order 2017.
11 Temporary stopping up of streets	11 – Yes, the model provision has been adapted slightly based on a combination of the East Anglia THREE Order and Hornsea Offshore Wind Farm (Project Two)	Yes - The East Anglia THREE Offshore Wind Farm Order 2017 and The Hornsea Two Offshore Wind Farm Order 2016
12 Access to works	12 – Yes, the model provision has been adapted slightly based on additions made through the East Anglia THREE Offshore Wind Farm Order	Yes – The East Anglia THREE Offshore Wind Farm Order 2017 and The Hornsea Two Offshore Wind Farm Order 2016
13 Agreements with street authorities	13 - Yes	Yes – The East Anglia THREE Offshore Wind Farm Order 2017 and The Hornsea Two Offshore Wind Farm Order 2016

Article in the draft DCO	Similarity to General Model Provisions (Article number in the Model Provisions)	Precedence in other DCOs
14 Application of the 1991 Act	No, but comparable provisions are commonly included in Transport and Works Act Orders	Yes – The Hornsea One Offshore Wind Farm Order 2014 and The Hornsea Two Offshore Wind Farm Order 2016
15 Discharge of water and works to watercourses	14 – Yes, this is a modified model provision but with necessary amendments in view of the repeal of s.85 of the Water Resources Act 1991, and project specific differences to alter watercourses linked to requirements within the DCO (requirement 16 and 25)	Yes – The East Anglia THREE Offshore Wind Farm Order 2017 (however not in relation to powers to alter watercourses)
16 Authority to survey and investigate the land onshore	16 – Yes but modified for necessary project specific reasons such as restricting trial holes from being made in land forming a railway held by or in right of the Crown without the consent of Network Rail or the Crown respectively	Yes – The East Anglia THREE Offshore Wind Farm Order 2017
17 Removal of human remains	17 – Yes, save that the power applies across the Order Limits rather than to a discrete area within the Order Limits	Yes - The Knottingley Power Plant Order 2015
18 Compulsory acquisition of land	18 – Yes, this article broadly follows the model provisions but with amendments by way of cross-reference to the compulsory acquisition of rights (article 20) and temporary use of land for carrying out the authorised project (article 26)	Yes – The East Anglia THREE Offshore Wind Farm Order 2017
19 Time limit for exercise of authority to acquire land compulsorily	20 - Yes	Yes – various including The East Anglia THREE Offshore Wind Farm Order 2017 and The Hornsea Two Offshore Wind Farm Order 2016
20 Compulsory acquisition of rights	21 – Yes, however with variations from the model provisions to provide flexibility, which is necessary to allow the undertaker to potentially reduce	Yes – The East Anglia THREE Offshore Wind Farm Order 2017 and similar provisions can be found in Article 19 of The Network Rail (Nuneaton North Chord Order)

Article in the draft DCO	Similarity to General Model Provisions (Article number in the Model Provisions)	Precedence in other DCOs
	the areas required for freehold acquisition and rely on new, permanent rights instead, where appropriate.	2010 and Part 3 of Schedule 6 to The Crossrail Act 2008.
21 Private rights	22 – Yes	Yes – The East Anglia THREE Offshore Wind Farm Order 2017 and The Hornsea Two Offshore Wind Farm Order 2016
22 Application of the Compulsory Purchase (Vesting Declarations) Act 1981	23 – Yes, this article has been updated to reflect the changes brought about by the Housing and Planning Act 2016.	Yes – The East Anglia THREE Offshore Wind Farm Order 2017
23 Application of Part 1 of the Compulsory Purchase Act 1965	No - this article has been added to reflect the changes brought about by the Housing and Planning Act 2016.	Yes – The Wrexham Gas Fired Generating Station Order 2017.
24 Acquisition of subsoil or airspace only	24 – Yes, similar provisions can be found in Article 24 of the Model Provisions	Yes – The National Grid (North London Reinforcement Project) Order 2014
25 Rights under or over streets	27 - Yes	Yes – various including The East Anglia THREE Offshore Wind Farm Order 2017 and The Hornsea Two Offshore Wind Farm Order 2016
26 Temporary use of land for carrying out the authorised project	28 – Amendments due to project specific differences and additions to introduce greater flexibility for the undertaker and to limit the amount of land to be acquired, or over which new rights are acquired, from landowners.	Yes – The East Anglia THREE Offshore Wind Farm Order 2017
27 Temporary use of land for maintaining authorised project	29 – Yes but with modifications based on recent Orders	Yes – The East Anglia THREE Offshore Wind Farm Order 2017
28 Extinguishment of private	No – this is project specific in relation to works to overhead	Yes - National Grid (Richborough Connection Project) Order 2017

<b>Article in the draft DCO</b>	<b>Similarity to General Model Provisions (Article number in the Model Provisions)</b>	<b>Precedence in other DCOs</b>
rights and restrictive covenants relating to apparatus removed from land subject to temporary possession	lines on land in which National Grid owns apparatus.	
29 Statutory undertakers	31 – Yes, but with some amendments in relation to removal of (c) from the Model Provisions	Yes – various including The East Anglia THREE Offshore Wind Farm Order 2017 and The Hornsea Two Offshore Wind Farm Order 2016
30 Recovery of costs of new connections	33 – Yes	Yes – various including The East Anglia THREE Offshore Wind Farm Order 2017 and The Hornsea Two Offshore Wind Farm Order 2016
31 Operation of generating station	No – added due to project specific reasons and required as per section 140 of the 2008 Act and based on recent Orders	Yes – The East Anglia THREE Offshore Wind Farm Order 2017 and The Hornsea Two Offshore Wind Farm Order 2016
32 Deemed marine licences under the 2009 Act	No - added due to project specific reasons and as per section 149A of the 2008 Act and based on recent Orders	Yes – The East Anglia THREE Offshore Wind Farm Order 2017 and The Hornsea Two Offshore Wind Farm Order 2016
33 Application of landlord and tenant law	35 - Yes	Yes – The East Anglia THREE Offshore Wind Farm Order 2017
34 Operational land for purposes of the 1990 Act	36 - Yes	Yes – various including The East Anglia THREE Offshore Wind Farm Order 2017 and The Hornsea Two Offshore Wind Farm Order 2016
35 Felling or lopping of trees and removal of hedgerows	39 – Yes, the first paragraphs are taken from the model provision; the paragraphs in relation to hedgerows are taken from previous projects including East Anglia THREE Offshore Wind Farm Order 2017	Yes – various including The East Anglia THREE Offshore Wind Farm Order 2017 and The Hornsea Two Offshore Wind Farm Order 2016
36 Trees subject to tree	40 – Yes, the article is a model provision save that it will also apply to tree preservation	Yes – The Hornsea Two Offshore Wind Farm Order 2016.

Article in the draft DCO	Similarity to General Model Provisions (Article number in the Model Provisions)	Precedence in other DCOs
preservation orders	orders made after the last assessment for the Environmental Statement.	
37 Certification of plans etc	41 – Yes, subject to project specific plans.	Yes – similar plans in The East Anglia THREE Offshore Wind Farm Order 2017
38 Arbitration	42 – Yes, the concept derives from the Model Provisions but the changes, including the addition of a new schedule, have been made to provide a more bespoke and relevant arbitration process	Yes – the draft Hornsea Project Three Offshore Wind Farm Order
39 Procedure in relation to certain approvals etc	No – but this is necessary for project specific approvals and a similar approach was followed on The Hinkley Point C (Nuclear Generating Station) Order 2013.	Yes – The Hinkley Point C (Nuclear Generating Station) Order 2013
40 Abatement of works abandoned or decayed	No – but this is required for project specific purposes and supplement the Energy Act 2004	Yes – The East Anglia THREE Offshore Wind Farm Order 2017
41 Saving provisions for Trinity House	53 – Yes (Model Provisions for Harbours). This provision is commonly used for projects of this nature	Yes – various including The East Anglia THREE Offshore Wind Farm Order 2017 and The Hornsea Two Offshore Wind Farm Order 2016
42 Crown rights	No - but this provision is project specific and generally reflects section 135 of the 2008 Act	Yes – The National Grid (Hinkley Point C Connection Project) Order 2016 and The East Anglia THREE Offshore Wind Farm Order 2017
43 Protective provisions	Yes, the concept of signposting the protection offered for statutory undertakers is taken from the model provisions	Yes – The East Anglia THREE Offshore Wind Farm Order 2017



**Schedule 2**  
**Comparison Table of DML Conditions**

	<b>Generation Assets DMLs Schedules 9 and 10, Part 4</b>	<b>Transmission Assets DMLs Schedules 11 and 12, Part 4</b>
<b>Design parameters</b>	1(1)(a)-(e)-(2) (wind turbine generator)	1-(2)(a)-(c) (offshore electrical platform)
	2(1) (accommodation platform) 2(2)-(3) (meteorological mast)	-
	3 (cables)	2 (cables)
	4(1)(a)-(c), 4(2)(a)-(e), (3) (wind turbine generator foundations)	-
	5(1)(a)-(c)-(2) (meteorological mast foundations)	-
	6(1)(a)-(b)-(2) (accommodation platform foundations)	-
	7(1)-(3) (measurement buoys)	-
<b>Phasing of the authorised scheme</b>	8(1)(a)-(h)-(2)(a)-(b) (Additional paragraphs cover additional generation assets (wind turbine generators, accommodation platforms, meteorological masts, measurement buoys and scour protection for the same).	3(1)(a)-(c), 2(a)-(b) (Phasing relates only to offshore electrical platforms.)
<b>Notifications and inspections</b>	9(1)-(11) (in respect of Work No. 1)	4(1)-(11) (in respect of Work No.2. A second notice is also required advising of the start date for Work No.s 3, 4A and 4B and route of the sub-sea cables and fibre optic cables)
<b>Aids to navigation</b>	10(1)-(5)	5(1)-(5)
<b>Colouring of structures</b>	11(1)-(2)	6(1)-(2)
<b>Chemicals, drilling and debris</b>	12(1)-(10) (Condition 12(1) also includes chemical agents placed within any monopile void)	7(1)-(11) (Additional condition 7(8) relates to obstructions resulting from Work No.s 4A or 4B)
<b>Force majeure</b>	13(1)-(2)	8(1)-(2)

<b>Pre-construction plans and documents</b>	14(1)(a)-(l) (Condition 14(1)(c)(iii) requires the construction method statement to include details of the cable installation proposals for the Haisborough, Hammond and Winterton Special Area of Conservation. Condition 14(1)(l) requires an ornithological monitoring plan.)	9(1)(a)-(l) (Condition 9(1)(g)(iv) requires the cable specification, installation and monitoring plan to include methods of trawl or drift net for Work No.s 4A and 4B. Condition 14(1)(h) also includes North Norfolk District Council to be consulted for the archaeological written scheme of investigation (offshore).)
	14(2)	9(2)
	15(1)-(5)	10(1)-(5)
<b>Post construction plans and documents</b>	16	11
<b>Reporting of engaged agents, contractors and vessels</b>	17(1)-(2)	12(1)-(2)
<b>Pre-construction monitoring and surveys</b>	18(1)-(3) (Condition 18(2)(c) requires pre-construction surveys to have regard to ornithological monitoring required by the ornithological monitoring plan.)	13(1)-(3)
<b>Construction monitoring</b>	19(1)-(5) (Additional condition 19(3) relates to noise monitoring and 19(4) relates to traffic monitoring.)	14(1)-(3)
<b>Post construction</b>	20(1)-(4) (Additional condition 20(2)(c) relates to ornithological monitoring and 20(2)(d) relates to traffic monitoring.)	15(1)-(4)
<b>Reporting of impact pile driving/ detonation of explosives</b>	21(1)-(3)	16(1)-(3)

**Schedule 3**  
**Norfolk Vanguard Offshore Wind Farm**  
**List of Order parameters**

Component	Specifications	Parameters	DCO Reference
<b>Structures</b>			
<b>Wind Turbine Generators</b>	Total installed export capacity at the point of connection to the offshore electrical platform(s)	1,800MW	Schedule 1, Part 1, Work No. 1  Schedules 9 & 10, Part 3, paragraph 2  Schedule 9 & 10, Part 4, condition 8
	Maximum number	200	Schedule 1, Part 1, Work No. 1  Schedule 1, Part 3, Requirement 3  Schedules 9 & 10, Part 3, paragraph 2  Schedules 9 & 10, Part 4, condition 8
	Maximum tip height from HAT	350m	Schedule 1, , Part 3, Requirement 2  Schedules 9 & 10, Part 4, condition 1
	Maximum hub height from HAT	200m	Schedule 1, Part 3, Requirement 2  Schedules 9 & 10, Part 4, condition 1
	Maximum rotor diameter	303m	Schedule 1, part 3, Requirement 2  Schedules 9 & 10, Part 4, condition 1
	Minimum spacing crosswind	680m	Schedule 1, Part 3, Requirement 2  Schedules 9 & 10, Part 4, condition 1
	Minimum spacing downwind	680m	Schedule 1, Part 3, Requirement 2  Schedules 9 & 10,

Component	Specifications	Parameters	DCO Reference
			Part 4, condition 1
	Minimum air draft from MHWS	22m	Schedule 1, Part 3, Requirement 2 Schedules 9 & 10, Part 4, condition 1
	Foundation types	Monopile (piled or suction caisson) Jacket (piled or suction caisson) Gravity base Floating tension leg (piled or gravity anchor)	Schedule 1, Part 1, Work No. 1 Schedules 9 & 10, Part 3, paragraph 2
<b>Offshore Electrical Platform – export capacity of 1,800MW at the point of connection to the offshore electrical platform(s)</b>	Maximum number	2	Schedule 1, Part 1, Work No. 2 Schedule 1, Part 3, Requirement 3 Schedules 11 & 12, Part 3, Work No. 2 Schedules 11 & 12, Part 4, condition 3
	Maximum height from HAT	100m	Schedule 1, Part 3, Requirement 4 Schedules 11 & 12, Part 4, condition 1
	Maximum length	120m	Schedule 1, Part 3, Requirement 4 Schedules 11 & 12, Part 4, condition 1
	Maximum width	80m	Schedule 1, Part 3, Requirement 4 Schedules 11 & 12, Part 4, condition 1
	Foundation types	Jacket (piled or suction caisson) Gravity base	Schedule 1, Part 1, Work No. 2 Schedules 11 & 12, Part 3, paragraph 2
<b>Accommodation Platform</b>	Maximum number	2	Schedule 1, Part 1, Work No. 1

Component	Specifications	Parameters	DCO Reference
			Schedule 1, Part 3, Requirement 3  Schedules 9 & 10, Part 3, paragraph 2  Schedules 9 & 10, Part 4, condition 8
	Maximum height from HAT	100m	Schedule 1, Part 3, Requirement 4  Schedules 9 & 10, Part 4, condition 2
	Maximum length	90m	Schedule 1, Part 3, Requirement 4  Schedules 9 & 10, Part 4, condition 2
	Maximum width	60m	Schedule 1, Part 3, Requirement 4  Schedules 9 & 10, Part 4, condition 2
	Foundation types	Jacket (piled or suction caisson)  Gravity base	Schedule 1, Part 1, Work No. 1  Schedule 1, Part 1, Work No. 2  Schedules 9 & 10, Part 3, paragraph 2
<b>Meteorological Mast</b>	Maximum number	2	Schedule 1, Part 1, Work No. 1  Schedule 1, Part 3, Requirement 3  Schedules 9 & 10, Part 3, paragraph 2  Schedules 9 & 10, Part 4, condition 8
	Maximum height from HAT	200m	Schedule 1, Part 3, Requirement 4
	Foundation types	Monopile (piled or suction caisson)  Jacket (piled or suction caisson)  Gravity base	Schedule 1, Part 1, Work No. 1  Schedules 9 & 10, Part 3, paragraph 2



Component	Specifications	Parameters	DCO Reference
<b>Lidar Measurement Buoys</b>	Maximum number	2	Schedule 1, Part 1, Work No. 1  Schedule 1, Part 3, Requirement 3  Schedules 9 & 10, Part 3, paragraph 2  Schedules 9 & 10, Part 4, condition 8
	Foundation types	Monopile (piled) Floating	Schedule 1, Part 1, Work No. 1  Schedules 9 & 10, Part 3, paragraph 2
<b>Wave Measurement Buoys</b>	Maximum number	2	Schedule 1, Part 1, Work No. 1  Schedule 1, Part 3, Requirement 3  Schedules 9 & 10, Part 3, paragraph 2  Schedules 9 & 10, Part 4, condition 8
	Foundation types	Floating	Schedule 1, Part 1, Work No. 1  Schedules 9 & 10, Part 3, paragraph 2
<b>Offshore Cables</b>			
<b>Array Cables</b>	Maximum length	600km	Schedule 1, Part 3, Requirement 5
	Maximum cable protection	209,000m <sup>3</sup>	Schedule 1, Part 3, Requirement 5
<b>Interconnector link Cables</b>	Maximum length	150km	Schedule 1, Part 3, Requirement 5
	Maximum cable protection	38,000m <sup>3</sup>	Schedule 1, Part 3, Requirement 5
<b>Export Cables</b>	Maximum length	400km	Schedule 1, Part 3, Requirement 5
	Maximum cable protection	119,836m <sup>3</sup>	Schedule 1, Part 3, Requirement 5

Component	Specifications	Parameters	DCO Reference
	Maximum number	4	Schedule 1, Part 1, Work No. 4A  Schedule 1, Part 1, Work No. 4B  Schedules 11 & 12, Part 3, paragraph 2
<b>Foundations (Wind Turbine Generators)</b>			
<b>Piled Foundation</b>	Maximum number of piles	4	Schedule 1, Part 3, Requirement 6  Schedules 9 & 10, Part 4, condition 4  Schedules 9 & 10, Part 4, condition 19
	Maximum pile diameter (single pile)	15m	Schedule 1, Part 3, Requirement 6  Schedules 9 & 10, Part 4, condition 4
	Maximum pile diameter (multiple piles)	5m	Schedule 1, Part 3, Requirement 6  Schedules 9 & 10, Part 4, condition 4
<b>Floating Foundation</b>	Maximum diameter at sea surface	70m	Schedule 1, Part 3, Requirement 6  Schedules 9 & 10, Part 4, condition 4
	Maximum number of anchor lines	12	Schedule 1, Part 3, Requirement 6  Schedules 9 & 10, Part 4, condition 4
	Maximum number of anchors	4	Schedule 1, Part 3, Requirement 6  Schedules 9 & 10, Part 4, condition 4
	Minimum draught clearance	4m	Schedule 1, Part 3, Requirement 6  Schedules 9 & 10,

Component	Specifications	Parameters	DCO Reference
			Part 4, condition 4
	Maximum angle of mooring lines	30°	Schedule 1, Part 3, Requirement 6 Schedules 9 & 10, Part 4, condition 4
<b>All Foundations</b>	Maximum seabed footprint area (excluding scour protection)	4,900m <sup>2</sup>	Schedule 1, Part 3, Requirement 6 Schedules 9 & 10, Part 4, condition 4
<b>Foundations (Meteorological Mast)</b>			
<b>Piled Foundation</b>	Maximum number of piles	4	Schedule 1, Part 3, Requirement 7 Schedules 9 & 10, Part 4, condition 5
	Maximum pile diameter (single pile)	10m	Schedule 1, Part 3, Requirement 7 Schedules 9 & 10, Part 4, condition 5
	Maximum pile diameter (multiple piles)	3m	Schedule 1, Part 3, Requirement 7 Schedules 9 & 10, Part 4, condition 5
<b>All Foundations</b>	Maximum seabed footprint area (excluding scour protection)	314m <sup>2</sup>	Schedule 1, Part 3, Requirement 7 Schedules 9 & 10, Part 4, condition 5
<b>Foundations (Offshore Electrical Platform)</b>			
<b>Piled Foundation</b>	Maximum number of piles	6	Schedule 1, Part 3, Requirement 8 Schedules 11 & 12, Part 4, condition 1
	Maximum pile diameter (jacket)	3m	Schedule 1, Part 3, Requirement 8 Schedules 11 & 12, Part 4, condition 1

Component	Specifications	Parameters	DCO Reference
<b>All Foundations</b>	Maximum seabed footprint area (excluding scour protection)	7,500m <sup>2</sup>	Schedule 1, Part 3, Requirement 8  Schedules 11 & 12, Part 4, condition 1
<b>Foundations (Accommodation Platform)</b>			
<b>Piled Foundation</b>	Maximum number of piles	6	Schedule 1, Part 3, Requirement 9  Schedules 9 & 10, Part 4, condition 6
	Maximum pile diameter (jacket)	3m	Schedule 1, Part 3, Requirement 9  Schedules 9 & 10, Part 4, condition 6
<b>All Foundations</b>	Maximum seabed footprint area (excluding scour protection)	7,500m <sup>2</sup>	Schedule 1, Part 3, Requirement 9  Schedules 9 & 10, Part 4, condition 6
<b>Foundations (Buoys)</b>			
<b>Wave buoy</b>	Maximum seabed footprint area	300m <sup>2</sup>	Schedule 1, Part 3, Requirement 10  Schedules 9 & 10, Part 4, condition 7
<b>Lidar buoy</b>	Maximum pile diameter	10m	Schedule 1, Part 3, Requirement 10  Schedules 9 & 10, Part 4, condition 7
	Maximum seabed footprint area (excluding scour protection)	157m <sup>2</sup>	Schedule 1, Part 3, Requirement 10  Schedules 9 & 10, Part 4, condition 7
<b>Total Scour Protection</b>			
<b>Wind turbine generators, Accommodation platform Meteorological masts, offshore electrical</b>	Maximum scour protection	53,195,398m <sup>3</sup>	Schedule 1, Part 3, Requirement 11

Component	Specifications	Parameters	DCO Reference
platforms and Lidar buoys			
<b>Licensed Marine Activities</b>			
Wind turbine generators	Maximum inert material disposed	3,645,000m <sup>3</sup>	Schedules 9 & 10, Part 3, paragraph 1
Accommodation platform	Maximum inert material disposed	75,000m <sup>3</sup>	Schedules 9 & 10, Part 3, paragraph 1
Meteorological masts	Maximum inert material disposed	12,566m <sup>3</sup>	Schedules 9 & 10, Part 3, paragraph 1
Array cable	Maximum inert material disposed	36,000,000m <sup>3</sup>	Schedules 9 & 10, Part 3, paragraph 1
Offshore electrical platforms	Maximum inert material disposed	75,000m <sup>3</sup>	Schedules 11 & 12, Part 3, paragraph 1
Inter-substation cables	Maximum inert material disposed	9,000,000m <sup>3</sup>	Schedules 11 & 12, Part 3, paragraph 1
Export cables (excluding SAC area)	Maximum inert material disposed	1,900,000m <sup>3</sup>	Schedules 11 & 12, Part 3, paragraph 1
Export cables (SAC area)	Maximum inert material disposed	500,000m <sup>3</sup>	Schedules 11 & 12, Part 3, paragraph 1
<b>Onshore Parameters</b>			
<b>Onshore Project Substation</b>	Maximum number of buildings housing the principal electrical equipment	2	Schedule 1, Part 3, Requirement 16
	Maximum height of buildings	19m	Schedule 1, Part 3, Requirement 16
	Maximum height of external electrical equipment	25m	Schedule 1, Part 3, Requirement 16
	Maximum footprint of each building	110m (length) x 70m (width)	Schedule 1, Part 3, Requirement 16
	Maximum fenced compound area (excluding accesses)	250m (length) by 300m (width)	Schedule 1, Part 3, Requirement 16
<b>Extension to the existing Necton National Grid substation</b>	Maximum height of external electrical equipment	15m	Schedule 1, Part 3, Requirement 16

Component	Specifications	Parameters	DCO Reference
<b>Overhead line replacement pylons</b>	Maximum fenced compound area (excluding accesses)	200m (length) by 150m (width)	Schedule 1, Part 3, Requirement 16
	Maximum height	55m	Schedule 1, Part 3, Requirement 16
<b>Underground cable ducts at the landfall</b>	Maximum number of ducts	2	Schedule 1, Part 3, Requirement 16



#### **Schedule 4**

#### **Comparison of the Articles of the Draft Order with the Articles of the Model Provisions**

STATUTORY INSTRUMENTS

~~STATUTORY INSTRUMENTS~~

~~2009~~2018 No. ~~2265~~

INFRASTRUCTURE PLANNING

The ~~Infrastructure Planning (Model Provisions) (England and Wales) Order 2009~~Norfolk Vanguard Offshore Wind Farm Order 201X

Made - - - - ~~1st September 2009~~2018

Laid before Parliament ~~8th September 2009~~2018

Coming into force - - ~~1st October 2009~~2018

~~The Secretary of State, in exercise of the powers conferred by section 38 of the Planning Act 2008(a), makes the following Order:~~

~~\*Citation and commencement\*~~

~~1. \*This Order may be cited as the \*Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 and shall come into force on 1st October 2009.~~

~~Model provisions~~

~~2. The provisions set out in the Schedules to this Order, of which those contained in Schedules 1 and 4 are of general application and those contained in Schedules 2 and 3 are of application to development relating to railways and harbours, respectively, are prescribed as model provisions for the purposes of section 38 of the Planning Act 2008.~~

~~\*Signed by authority of the Secretary of State for \*Communities and Local Government~~

*Bill McKenzie*

Parliamentary Under Secretary of State

~~1st September 2009~~ \_\_\_\_\_  
Department for Communities and Local  
Government

~~SCHEDULE 1~~ \_\_\_\_\_ Article 2

~~General model provisions~~

CONTENTS

PART 1

Preliminary

1. ~~\*Citation and commencement\*~~

4

~~1.2.~~ 2. Interpretation

4

# CONTENTS

## PART 2 Principal Powers

~~2.3.~~ Development consent etc. granted by the Order 10

~~(a) 2008 c.29.~~

<del>3. Maintenance of</del> <u>4. Limits of deviation</u>	<u>10</u>
<u>5. Power to construct and maintain</u> authorised project	<u>10</u>
<del>4.6.</del> Benefit of <u>the</u> Order	<u>10</u>
<del>5. Consent to transfer benefit of Order</del>	
<del>6.7.</del> Application and modification of legislative provisions	<u>12</u>
<del>7.8.</del> Defence to proceedings in respect of statutory nuisance	<u>13</u>

## PART 3 Streets

<del>8.9.</del> Street works	<u>14</u>
<del>9. Stopping up of streets</del>	
10. Public rights of way	<u>14</u>
11. Temporary stopping up of streets	<u>14</u>
12. Access to works	<u>15</u>
13. Agreements with street authorities	<u>15</u>
<u>14. Application of the 1991 Act</u>	<u>15</u>

## PART 4 Supplemental Powers

<del>14.15.</del> Discharge of water <del>15. Protective work to buildings and works to watercourses</del>	<u>16</u>
16. Authority to survey and investigate the land <u>onshore</u>	<u>17</u>
17. Removal of human remains	<u>18</u>

## PART 5 Powers of Acquisition

18. Compulsory acquisition of land	<u>19</u>
<del>19. Compulsory acquisition of land—incorporation of the mineral code</del>	
<del>20.19.</del> Time limit for exercise of authority to acquire land compulsorily	<u>19</u>
<del>21.20.</del> Compulsory acquisition of rights	<u>19</u>
<del>22.21.</del> Private rights <del>of way</del>	<u>20</u>
<del>23.22.</del> Application of the Compulsory Purchase (Vesting Declarations) Act 1981	<u>21</u>
<u>23. Application of Part 1 of the Compulsory Purchase Act 1965</u>	<u>22</u>
24. Acquisition of subsoil <u>or airspace</u> only	<u>22</u>
<del>25. Acquisition of land limited to subsoil lying more than 9 metres beneath surface</del>	
<del>26. Acquisition of part of certain properties</del>	
<del>27.25.</del> Rights under or over streets	<u>22</u>
<del>28.26.</del> Temporary use of land for carrying out the authorised project	<u>23</u>
<del>29.27.</del> Temporary use of land for maintaining authorised project	<u>24</u>

<del>30. Special category land</del>	<del>28. Extinguishment of private rights and restrictive covenants relating to apparatus r</del>	
<del>31. 29. Statutory undertakers</del>		<del>25</del>
<del>32. Apparatus and rights of statutory undertakers in stopped-up streets</del>		
<del>33. 30. Recovery of costs of new connections</del>		<del>25</del>

## PART 6 Operations

<u>31. Operation of generating station</u>	<u>26</u>
<u>32. Deemed marine licences under the 2009 Act</u>	<u>26</u>

## PART 7

### ~~34. Railway and navigation undertakings~~ Miscellaneous and General

<del>35. 33. Application of landlord and tenant law</del>	<del>26</del>
<del>36. 34. Operational land for purposes of the 1990 Act</del>	<del>27</del>
<del>37. Deemed consent under section 34 of the Coast Protection Act 1949</del>	
<del>38. Deemed licence under Part 2 of the Food and Environment Protection Act 1985</del>	
<del>39. 35. Felling or lopping of trees and removal of hedgerows</del>	<del>27</del>
<del>40. 36. Trees subject to tree preservation orders</del>	<del>27</del>
<del>41. 37. Certification of plans etc</del>	<del>27</del>
<del>42. 38. Arbitration</del>	<del>28</del>

### **Schedule A**

#### **AUTHORISED PROJECT**

##### **Part 1**

#### **AUTHORISED DEVELOPMENT**

##### **Part 2**

#### **ANCILLARY WORKS**

### **Schedule B**

#### **STREETS SUBJECT TO STREET WORKS**

### **Schedule C**

#### **STREETS TO BE STOPPED UP**

##### **Part 1**

#### **STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED**

##### **Part 2**

#### **STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED**

### **Schedule D**

#### **STREETS TO BE TEMPORARILY STOPPED UP**

### **Schedule E**

#### **ACCESS TO WORKS**

<u>39. Procedure in relation to certain approvals etc</u>	<u>29</u>
<u>40. Abatement of works abandoned or decayed</u>	<u>29</u>
<u>41. Saving provisions for Trinity House</u>	<u>29</u>
<u>42. Crown rights</u>	<u>29</u>

~~Schedule F~~  
SCHEDULES

<u>SCHEDULE 1 — Authorised Project</u>	<u>31</u>
<u>PART 1 — Authorised Development</u>	<u>31</u>
<u>PART 2 — Ancillary Works</u>	<u>45</u>
<u>PART 3 — Requirements</u>	<u>45</u>
<u>SCHEDULE 2 — Streets subject to Street Works</u>	<u>54</u>
<u>SCHEDULE 3 — Public Rights of Way to be temporarily stopped up</u>	<u>59</u>
<u>SCHEDULE 4 — Streets to be stopped up</u>	<u>63</u>
<u>SCHEDULE 5 — Access to Works</u>	<u>75</u>
<u>SCHEDULE 6 — Land in which only New Rights etc., may be acquired</u>	<u>85</u>
<u>SCHEDULE 7 — Modification of compensation and compulsory purchase enactments for creation of new rights</u>	<u>108</u>
<u>SCHEDULE 8 — Land of which temporary possession may be taken</u>	<u>111</u>
<del>LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH SURFACE MAY BE ACQUIRED</del>	<del>SCHEDULE 9 —</del> <u>Deer</u>

~~Schedule G~~

~~LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN~~

~~Schedule H~~

~~DEEMED CONSENT UNDER COAST PROTECTION ACT 1949~~

~~Schedule I~~

~~DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION ACT 1985~~

~~Schedule J~~

~~TREES SUBJECT TO TREE PRESERVATION ORDERS~~

<u>PART 1 — Interpretation</u>	<u>117</u>
<u>PART 2 — Licensed Marine Activities – General</u>	<u>121</u>
<u>PART 3 — Details of Licensed Marine Activities</u>	<u>122</u>
<u>PART 4 — Conditions</u>	<u>123</u>
<u>SCHEDULE 10 — Deemed Licence under the 2009 Act – Generation Assets (Licence 2 – Phase 2)</u>	<u>134</u>
<u>PART 1 — Interpretation</u>	<u>134</u>
<u>PART 2 — Licensed Marine Activities – General</u>	<u>138</u>
<u>PART 3 — Details of Licensed Marine Activities</u>	<u>139</u>
<u>PART 4 — Conditions</u>	<u>140</u>
<u>SCHEDULE 11 — Deemed Licence under the 2009 Act – Transmission Assets (Licence 1 – Phase 1)</u>	<u>151</u>
<u>PART 1 — Interpretation</u>	<u>151</u>
<u>PART 2 — Licensed Marine Activities – General</u>	<u>155</u>
<u>PART 3 — Details of Licensed Marine Activities</u>	<u>166</u>

<u>PART 4 — Conditions</u>	<u>167</u>
<u>SCHEDULE 12 — Deemed Licence under the 2009 Act – Transmission Assets</u> <u>(Licence 2 – Phase 2)</u>	<u>176</u>
<u>PART 1</u>	<u>176</u>
<u>PART 2 — Licensed Marine Activities – General</u>	<u>180</u>
<u>PART 3 — Details of Licensed Marine Activities</u>	<u>191</u>
<u>PART 4 — Conditions</u>	<u>192</u>
<u>SCHEDULE 13 — Hedgerows</u>	<u>201</u>
<u>PART 1 — Removal of Hedgerows</u>	<u>201</u>
<u>PART 2 — Removal of Important Hedgerows</u>	<u>207</u>
<u>SCHEDULE 14 — ARBITRATION RULES</u>	<u>211</u>
<u>SCHEDULE 15 — Procedure for discharge of Requirements</u>	<u>214</u>
<u>SCHEDULE 16 — PROTECTIVE PROVISIONS</u>	<u>216</u>
<u>PART 1 — Protection for electricity, gas, water and sewerage</u> <u>undertakers</u>	<u>216</u>
<u>PART 2 — For the Protection of National Grid</u>	<u>220</u>
<u>PART 3 — For the Protection of Cadent Gas Limited as Gas</u> <u>Undertaker</u>	<u>228</u>
<u>PART 4 — Protection for Operators of Electronic Communications</u> <u>Code Networks</u>	<u>235</u>
<u>PART 5 — Protection of Network Rail Infrastructure Limited</u>	<u>236</u>
<u>PART 6 — For the Protection of Anglian Water Services Limited</u>	<u>242</u>
<u>PART 7 — For the protection of the Environment Agency and drainage</u> <u>authorities</u>	<u>245</u>

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order under sections 37, 114, 115, 120 and 149A of the Planning Act 2008 (“the 2008 Act”)(b);

And whereas the application was examined by a Panel appointed as an examining authority by the Secretary of State pursuant to Chapter 4 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c);

The examining authority, having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74 of the 2008 Act made a report and recommendation to the Secretary of State;

The Secretary of State, having considered the report and recommendation of the Panel, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in its opinion do not make any substantial change to the proposals;

The Secretary of State, having considered the report and recommendation of the Panel, is satisfied that open space comprised within the Order land, when burdened with the new

- (a) S.I. 2009/2264 as amended by the Localism Act (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 (S.I. 2013/522)
- (b) 2008 c.29, Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20)
- (c) S.I. 2010/103, amended by S.I. 2012/635



rights authorised for compulsory acquisition under the terms of this Order, will be no less advantageous than it was before such acquisition, to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public and that, accordingly, section 132(3) of the 2008 Act applies;

The Secretary of State in exercise of the powers conferred by sections 114, 115, 120, and 149A of the 2008 Act the Secretary of State makes the following Order—

## PART 1

### Preliminary

#### Citation and commencement

1. \*This Order may be cited as the \*Norfolk Vanguard Offshore Wind Farm Order and comes into force on [●] 201[●].

#### **Interpretation**

2. ~~1. (1)~~ (1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(~~a~~d);

~~(a) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.~~

“the 1965 Act” means the Compulsory Purchase Act 1965(~~a~~e);

“the 1980 Act” means the Highways Act 1980(~~b~~f);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(g);

“the 1989 Act” means the Electricity Act 1989(h);

~~“the 1990 Act” means the Town and Country Planning Act 1990(e); “the 1991 Act” means the New Roads and Street Works Act 1991(d); “the 2008 Act” means the Planning Act 2008(e);i);~~

“the 1991 Act” means the New Roads and Street Works Act 1991(j);

“the 2003 Act” means the Communications Act 2003(k);

“the 2004 Act” means the Energy Act 2004(l);

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(d) 1961 c.33

(e) 1965 c.56

(f) 1980 c.66

(g) 1981 c.66

(h) 1989 c.29

(i) 1990 c.8

(j) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 78(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18)

(k) 2003 (c.21)

(l) 2004 c.20. Section 105 was amended by section 69 of the Energy Act 2008 (c.32)

“the 2008 Act” means the Planning Act 2008(m);

“the 2009 Act” means the Marine and Coastal Access Act 2009(n);

“the 2016 Regulations” means the Environmental Permitting (England and Wales) Regulations 2016(o);

“access to works plan” means the plan certified as the access to works plan by the Secretary of State for the purposes of this Order;

“accommodation platform” means a fixed structure providing offshore accommodation for personnel;

“ancillary works” means the ancillary works described in Part 2 of ~~Schedule A (authorised project)~~ 1 (ancillary works) and any other works authorised by the ~~Order~~ is and which are not development within the meaning of section 32 of the 2008 Act;

“authorised development” means the development and associated development described in Part 1 of ~~Schedule A~~ 1 (authorised ~~project~~ development) ~~and~~ and any other development authorised by this Order~~,~~ which is development within the meaning of section 32 of the 2008 Act;

~~“the authorised project”~~ means the authorised development and the ancillary works authorised by this Order;

~~“the book of reference”~~ means the book of reference certified by the ~~decision-maker~~ Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“cable” means any onshore or offshore cable and in respect of any onshore cable includes direct lay cables and/or cables pulled through cable ducts;

“cable ducts” means conduits for the installation of cables and/or fibre optic cables;

“carriageway” has the same meaning as in the 1980 Act;

~~“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act; “the decision-maker” has the same meaning as in section 103 of the 2008 Act;~~ “commence” means, (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for pre-construction surveys and monitoring approved under the deemed marine licences or, (b) in respect of any other works comprised in the authorised project, the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, temporary hard standing, the temporary display of site notices or advertisements and the words “commencement” and “commenced” must be construed accordingly;

“deemed marine licences” means the marine licences set out in Schedules 9, 10, 11 and 12;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands B75 7RL and any successor body to its functions;

“design and access statement” means the document certified as the design and access statement by the Secretary of State for the purposes of this Order;

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(m) 2008 c.29. The relevant provisions of the Planning Act 2008 are amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27). Section 149A was inserted by paragraph 4 in Part 1 of Schedule 8 to the Marine and Coastal Access Act 2009 (c.23)

(n) 2009 c.23

(o) S.I.2016/1154

“draft marine mammal mitigation protocol” means the document certified as the draft marine mammal mitigation protocol by the Secretary of State for the purposes of this Order;

“draught height” means the distance between the lowest point of the rotating blade of a wind turbine generator and MHWS;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“floating foundation” means a fully submersible or semi-submersible platform and associated access equipment, moored to the seabed by tension legs and anchored by way of gravity anchor points or pin pile anchors;

“gravity anchor point” means a single weight comprising steel, steel and concrete or concrete to which a single or multiple mooring chains or wires are attached;

“gravity base system” means a structure principally of steel, concrete, or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or additional skirts and associated equipment including scour protection, J-tubes, transition piece, corrosion protection systems, fenders and maintenance equipment, boat access systems, access ladders and access and rest platform(s) and equipment;

“highway” and “highway authority” have the same meaning as in the 1980 Act(p);

~~“the land plan” means the plan certified as the land plan by the decision-maker for the purposes of this Order;~~horizontal directional drilling” means a trenchless technique for installing an underground duct between two points without the need to excavate vertical shafts;

“important hedgerows plan” means the document certified as the important hedgerows plan by the Secretary of State for the purposes of this Order;

“in principle Norfolk Vanguard Southern North Sea candidate Special Area of Conservation Site Integrity plan” means the document certified as the in principle Norfolk Vanguard Southern North Sea candidate Special Area of Conservation Site Integrity plan by the Secretary of State for the purposes of this Order;

“interface cables” means buried onshore cables and fibre optic cables which connect the onshore project substation to the National Grid substation;

“jacket foundation” means a steel jacket/lattice-type structure constructed of steel which is fixed to the seabed at three or more points with steel pin piles or steel suction caissons and associated equipment including scour protection, J-tubes, transition piece, corrosion protection systems, fenders and maintenance equipment, boat access systems, access ladders and access and rest platform(s) and equipment;

“jointing pit” means an excavation formed to enable the jointing of high voltage power cables and fibre optic cables;

“jointing works” means a process by which two or more cables or fibre optic cables are connected to each other by means of cable joints within a jointing pit;

“landfall” means the location at which the offshore cables and fibre optic cables come ashore;

“land plan” means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

“LIDAR” means light detection and ranging;

“limits of deviation” means the limits of deviation referred to in article 4 (limits of deviation) for the overhead line modification works comprised in Work No. 11;

“HAT” means highest astronomical tide;

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(p) “Highway” is defined in section 328(1) for “highway authority”, see section 1

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace to the extent assessed in the environmental statement; and “maintenance” is construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“mean low water springs” or “MLWS” means the lowest level which spring tides reach on average over a period of time;

“measurement buoy” means any floating device used for measurement purposes, including LIDAR buoys and wave buoys;

“meteorological mast” means a mast housing equipment to measure wind speed and other wind characteristics, including a topside housing electrical, communication and associated equipment and marking and lighting;

“MMO” means the Marine Management Organisation;

“mobilisation area” means an area associated with the onshore transmission works including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“monopile foundation” means a steel pile, typically cylindrical, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, transition piece, corrosion protection systems, fenders and maintenance equipment, boat access systems, access ladders and access and rest platform(s) and equipment;

“National Grid” means National Grid Electricity Transmission PLC;

“National Grid substation extension” means the extension to the existing 400kV National Grid substation at Necton to provide a connection point to the 400kV grid network, including switchgear, circuit breakers and extension to existing busbar structures;

“Norfolk Boreas offshore wind farm” means the proposed offshore wind farm located off the Norfolk coast;

“offshore cable crossings” means the crossing of existing sub-sea cables or pipelines or other existing offshore infrastructure by the array, interconnecting and/or export cables and fibre optic cables authorised by this Order together with physical protection measures including concrete mattresses, rock placement or other protection methods;

“offshore electrical platform” means a platform attached to the seabed by means of a foundation, with one or more decks, whether open or fully clad, accommodating electrical power transformers, switchgear, instrumentation, protection and control systems, and other associated equipment and facilities to enable the transmission of electronic communications and for electricity to be collected at, and exported from, the platform;

“offshore in principle monitoring plan” means the document certified as the offshore in principle monitoring plan by the Secretary of State for the purposes of this Order;

“offshore works” means Work Nos. 1 to 4B and any ancillary works in connection with those works;

“onshore cable corridor” means the onshore area in which the cables and fibre optic cables will be located within the Order limits;

“onshore project substation” means a facility containing electrical equipment including (but not limited to) power transformers, switchgear, welfare facilities, access, fencing and other associated equipment, structures or buildings;

“Order land” means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;

- (a) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (b) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (c) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (e) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (d) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (e) 2008 c.29.

~~“the Order limits” means the limits shown on the works plan within which the authorised project may be carried out~~ “Order limits” means the limits shown on the works plan within which the authorised project may be carried out, whose grid coordinates seaward of MHWS are set out in paragraph 2 of Part 1 of Schedule 1 (authorised development) of this Order;

“outline access management plan” means the document certified as the outline access management plan by the Secretary of State for the purposes of this Order under article 37 (certification of plans etc.);

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State for the purposes of this Order;

“outline landscape and ecological management strategy” means the document certified as the outline landscape and ecological management strategy by the Secretary of State for the purposes of this Order;

“outline navigation monitoring strategy” means the document certified as the outline navigation monitoring strategy by the Secretary of State for the purposes of this Order;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of the Order;

“outline project environmental management plan” means the document certified as the outline project environmental management plan by the Secretary of State for the purposes of this Order;

“outline scour protection and cable management plan” means the document certified as the outline scour protection and cable management plan the Secretary of State for the purposes of this Order;

“outline traffic management plan” means the document certified as the outline traffic management plan by the Secretary of State for the purposes of this Order;

“outline travel plan” means the document certified as the outline travel plan by the Secretary of State for the purposes of this Order;

“outline written scheme of investigation (offshore)” means the document certified as the outline written scheme of investigation (offshore) by the Secretary of State for the purposes of this Order;

“outline written scheme of investigation (onshore)” means the document certified as the outline written scheme of investigation (onshore) by the Secretary of State for the purposes of this Order;

“overhead line modification” means alteration and repositioning of the overhead line including removal and replacement of existing structures and installation of new structures in respect of the existing Walpole to Norwich Main 400kV overhead line between pylons 4VV123 and 4VV127 on land south east of Necton, Norfolk to allow connection into the National Grid substation extension;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981<sup>(aq)</sup>;

“pin piles” means steel cylindrical piles driven and/or drilled into the seabed to secure steel jacket foundations;

“pin pile anchor point” means steel cylindrical piles driven and/or drilled into the seabed to anchor a floating foundation;

“relevant planning authority” means—~~(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;~~(ii)~~a National Park Authority;~~(iii)~~the Broads Authority;~~ and(iv)~~the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;~~

~~“rights plan” means the plan certified as the rights plan by the decision-maker for the purposes of this Order; “the sections” means the sections shown on the plan certified as the section drawings plan by the decision-maker for the purposes of this Order; relevant provision of this Order applies is situated;~~

“requirements” means those matters set out in Part 3 of Schedule 1 (requirements) to this Order;

“single offshore phase” means carrying out all offshore works as a single construction operation;

“single onshore phase” means a single duct laying operation followed by a one separate operation to pull the cables through the ducts and one separate operation to construct the onshore project substation;

“statutory undertaker” means any person falling within section 127(8), ~~128(5) or 129(2)~~ of the 2008 Act and\* a public communications provider as defined in section 151\* of the 2003 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act; ~~“tree preservation order” has the meaning given in section 198 of the 1990 Act(r);~~

“suction caisson” means a large diameter steel cylindrical shell which penetrates the seabed assisted by a hydrostatic pressure differential for fixity of foundations;

“temporary stopping up of public rights of way plan” means the plan certified as the temporary stopping up of public rights of way plan by the Secretary of State for the purposes of this Order;

<sup>(q)</sup> 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

<sup>(r)</sup> “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act (c.7)



“tension leg” means a steel or composite cable that connects the floating platform to the gravity anchor point or pin pile anchor point;

“transition jointing pit” means an excavation formed to enable the jointing of the offshore export cables and fibre optic cables comprised in Work No. 4B to the transmission works;

“transmission works” means Work Nos. 4C to 12 and any related further associated development in connection with those works;

~~“the tribunal”~~ means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“trenchless installation techniques” means techniques for installing an underground duct between two points, without excavating and back-filling a trench;

“two offshore phases” means carrying out the offshore works as two separate construction operations;

“two onshore phases” means a single duct laying operation followed by two separate operations to pull the cables through the ducts and two separate operations to construct the onshore project substation;

~~“undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act;~~Norfolk Vanguard Limited;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

~~“the works plan” means the plan certified as the works plan by the decision-maker for the purposes of this Order.~~wind turbine generator” means a structure comprising a tower, rotor with up to three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include (but is not limited to) corrosion protection systems, helicopter landing facilities and other associated equipment, fixed to a foundation; and

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order;

~~(2)~~ (2) References in this Order to rights over land include references to rights to do or restrain or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over the land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or which is an interest otherwise comprised in the Order land.

~~(3)~~ (3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised project shall be taken to be measured along that work, save in respect of the parameters referred to requirements 2 to 11 in Part 3, Schedule 1 (requirements) and conditions 1-8 in Part 4, Schedules 9 and 10 of the deemed marine licences for the generation assets and conditions 1-3 in Part 4, Schedules 11 and 12 of the deemed marine licences for the transmission assets.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

~~*[NOTE: In the case of off-shore development, which is outside the area of any planning authority, it will be necessary to identify another appropriate body as the relevant planning authority.]*~~

(5) Unless otherwise stated, references in this Order to points identified by letters are to be construed as references to the points so lettered on the works plan.

(6) The expression “includes” may be construed without limitation.

## PART 2

### Principal Powers

#### **Development consent etc. granted by the Order**

3. ~~2.~~(1) Subject to the provisions of this Order and to the requirements ~~in the Schedule (requirements) attached to this Order~~ the undertaker is granted—

(a) ~~d~~Development consent for the authorised development; and

(b) Consent\* for the ancillary works.\*

~~(b) consent~~\* for the ancillary works.\* to be carried out within the Order limits.

~~(2) (a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order. Subject to the requirements and conditions in the deemed marine licences, Work Nos. 1 to 4B must be constructed anywhere within the Order limits seaward of MHWS and Work Nos. 4C to 12 must be constructed anywhere within the Order limits landward of MHWS.~~

#### Limits of deviation

4. ~~—~~(1) In carrying out the replacement of circuits as part of Work No. 11 for which it is granted development consent by article 3(1) (development consent etc. granted by the Order) the undertaker may—

(a) deviate vertically from the levels of the existing 400kV overhead line from Walpole to Norwich Main to be modified as part of Work No.11—

(i) to any extent not exceeding 4 metres upwards; or

(ii) to any extent downwards as may be found to be necessary or convenient.

~~Maintenance of~~ Power to construct and maintain authorised project

5. ~~3.~~(1) The undertaker may at any time construct and maintain the authorised project, except to the extent that this Order or an agreement made under this Order~~;~~ provides otherwise.

(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under Part 4 of the 2009 Act (marine licensing) for offshore works not covered by the deemed marine licences.

#### **Benefit of the Order**

6. ~~—~~(1) Subject to paragraphs (2) and (4), the undertaker may with the written consent of the Secretary of State—

(a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (2) below) and such related statutory rights as may be agreed between the undertaker and the transferee;

(b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (2) below) and such related statutory rights as may be so agreed.

(2) Subject to paragraph (4), the undertaker may with the written consent of the Secretary of State—

(a) where an agreement has been made in accordance with paragraph (1)(a), transfer to the transferee the whole of any of the deemed marine licences and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) where an agreement has been made in accordance with paragraph (1)(b), grant to the lessee, for the duration of the period mentioned in paragraph (1)(b), the whole of any of the deemed marine licences and such related statutory rights as may be so agreed.

(3) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application and the Secretary of State must provide a response within four weeks of receipt of the notice.

(4) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the whole of the benefit of the provisions of the deemed marine licences.

(5) The Secretary of State must determine an application for consent made under this article within a period of eight weeks commencing on the date the application is received by the Secretary of State, unless otherwise agreed in writing with the undertaker.

~~(6) 4. Subject to article 5 (consent to transfer benefit of Order), the provisions of articles 11 and 12 [specify relevant articles] shall have effect solely for the benefit of [specify person, body or class of person]. [NOTE: This article is required where provisions of the Order are specific to a named undertaker or class of undertaker (see section 156(2) of the 2008 Act).]~~

~~Consent to transfer benefit of Order 5.—(1) The undertaker may, with the consent of the [specify person or body]—~~

~~(a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed. Where the Secretary of State is minded to refuse an application for consent made under this article and notifies the undertaker accordingly, or the Secretary of State fails to determine the application for consent under this article within the period prescribed in paragraph (5), the undertaker may refer the matter for determination in accordance with article 38 (arbitration).~~

(7) Where paragraph (11) applies no consent of the Secretary of State is required under paragraph (1) or paragraph (2).

(8) (2) Where an agreement has been made in accordance with paragraph (1) or (2) references in this Order to the undertaker, except in paragraph (39), shall (10), or (12), include references to the transferee or the lessee.

(9) (3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) shall be or (2) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(10) Where an agreement has been made in accordance with paragraph (1) or (2)—

(a) the benefit (“the transferred benefit”) includes any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates;

(b) the transferred benefit resides exclusively with the transferee or, as the case may be, the lessee and the transferred benefit is not enforceable against the undertaker save in the case of a deemed marine licence transferred or granted in respect of any breach of an obligation by the undertaker which occurs prior to such transfer or grant or which occurs as a result of any activity carried out by the undertaker on behalf of the transferee.

(11) This paragraph applies where—

- (a) the transferee or lessee is a person who holds a licence under the Electricity Act 1989; or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made,
  - (ii) any such claim has been made and has been compromised or withdrawn,
  - (iii) compensation has been paid in final settlement of any such claim,
  - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(12) The provisions of article 9 (street works), article 11 (temporary stopping up of streets), article 18 (compulsory acquisition of land), article 20 (compulsory acquisition of rights), article 26 (temporary use of land for carrying out the authorised project) and article 27 (temporary use of land for maintaining the authorised project) have effect only for the benefit of the named undertaker and a person who is a transferee or lessee and is also—

- (a) in respect of Works Nos. 4C to 12 a person who holds a licence under the Electricity Act 1989; or
- (b) in respect of functions under article 9 (street works) relating to a street, a street authority.

(13) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State, and if such transfer or grant relates to the exercise of powers in their area, to the MMO and the relevant planning authority.

(14) The notice required under paragraphs (3) and (13) must—

- (a) state—
  - (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
  - (ii) subject to paragraph (15), the date on which the transfer will take effect;
  - (iii) the provisions to be transferred or granted; and
  - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (9), will apply to the person exercising the powers transferred or granted; and
  - (v) where paragraph (11) does not apply, confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land.
- (b) be accompanied by—
  - (i) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
  - (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

(15) The date specified under paragraph (14)(a)(ii) must not be earlier than the expiry of five days from the date of the receipt of the notice

(16) The notice given under paragraph (14) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

## Application and modification of legislative provisions

~~7. 6.—(1) Subject to the modifications set out in paragraph (2) the following provisions of the *insert short title of the relevant Act* shall be incorporated in this Order—~~(1) Regulation 6 of the Hedgerows Regulations 1997(s) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following

~~(a) section[s] X *specify relevant section(s)*;~~

~~(2) The modifications are: *insert relevant modifications*;~~

“(k) or for carrying out or the maintenance of development which has been authorised by an order granting development consent pursuant to the Planning Act 2008”

(2) The provisions of the Neighbourhood Planning Act 2017(t) insofar as they relate to temporary possession of land under articles 28 (temporary use of land for carrying out the authorised project) and 29 (temporary use of land for maintaining the authorised project) of this Order do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project.

(3) The following provisions do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project—

(a) ~~(3) In construing the *insert short title of the relevant Act* as incorporated the following expressions shall have the following meanings: *insert relevant expressions and definitions*~~ the Environmental Permitting (England and Wales) Regulations 2010(u), to the extent that they require a permit for anything that would have required consent made under section 109 of the Water Resources Act 1991 immediately before the repeal of that section;

(b) the provisions of any bylaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 of the Water Resources Act 1991(v) that require consent or approval for the carrying out of works;

(c) section 23 of the Land Drainage Act 1991(w) (prohibition of obstructions etc. in watercourses); and

(d) the provisions of any bylaws made under section 66 of the Land Drainage Act 1991 (powers to make bylaws) that require consent or approval for the carrying out of works.

## Defence to proceedings in respect of statutory nuisance

~~8. 7.—(1)~~(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(~~ax~~) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from

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(S) SI 1997/1160

(t) 2017 c.20

(u) S.I. 2010/675. See amendments made by S.I. 2016/475

(v) Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c.16), section 84(2) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009, paragraph 49 of Schedule 2 to the Flood and Water Management Act 2010 (c.29) and paragraph 315 of Schedule 2 to S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995(c.25) and section 224 of, and paragraph 24 of Schedule 16 and Part 5 of Schedule 22 to, the Marine and Coastal Access Act 2009. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995

(w) 1991 c.59. Section 23 was amended by paragraph 192 of Schedule 22 to the Environment Act 1995, paragraph 32 of Schedule 2 to the Flood and Water Management Act 2010 and S.I. 2013/755. Section 66 was amended by paragraph 38 of Schedule 2 to the Flood and Water Management Act 2010 and by section 86(3) of the Water Act 2014

(x) 1990 c.43. There are amendments to this Act which are not relevant to the Order.

premises so as to be prejudicial to health or a nuisance) no order ~~shall~~may be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given ~~(a)1990 c.43. There are amendments to this Act which are not relevant to this Order.~~ under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974~~(ay)~~; or
  - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in ~~accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25~~compliance with requirement 27 (control of noise during operational phase); or
  - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), ~~shall~~do not apply where the consent relates to the use of premises by the undertaker for ~~the~~ purposes of or in connection with the construction or maintenance of the authorised project.

## PART 3

### Streets

#### **Street works**

9. 8. ~~(1)~~(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in **Schedule B2** (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel within or under it;
- (b) tunnel or bore under the street;
- (c) remove or use all earth and materials in or under the street;
- (d) ~~(e)~~place and keep apparatus ~~in~~under the street;
- (e) ~~(d)~~maintain apparatus ~~in~~under the street or change its position; and
- (f) ~~(e)~~execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c), (d) and ~~(d)~~(e).

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(Y) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to the Order.



(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

~~(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).~~

~~(3)~~ (4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

~~[NOTE: This article should not be used for the purposes of authorising street works that affect a trunk road (as defined in the 1980 Act); no trunk roads should be specified in Schedule B (streets subject to street works). For any street works affecting a trunk road the undertaker should make an application for a licence under section 50 of the 1991 Act.]~~ [Public rights of way](#)

### Stopping up of streets

~~10.9.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule C (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of those Parts of that Schedule.~~

(a) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

~~(2) No street specified in columns (1) and (2) of Part 1 of Schedule C (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless—~~

~~(a) the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).~~

~~(3) No street specified in columns (1) and (2) of Part 2 of Schedule C (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.~~

~~(4) The condition referred to in paragraph (3) is that—~~

~~(a) the undertaker is in possession of the land; or  
(b) there is no right of access to the land from the street concerned; or  
(c) there is reasonably convenient access to the land otherwise than from the street concerned; or  
(d) the owners and occupiers of the land have agreed to the stopping up.~~

~~(5) Where a street has been stopped up under this article—~~

~~(a) all rights of way over or along the street so stopped up shall be extinguished; and  
(b) the undertaker may appropriate and use for the purposes of the authorised project so much of the site of the street as is bounded on both sides by land owned by the undertaker.~~

~~(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.~~

~~(7) This article is subject to article 32 (apparatus etc. of statutory undertakers).~~

**Public rights of way**<sup>10</sup>.—(1) With effect from the ~~[date of publication of this Order]~~ ~~[the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan]~~, ~~[the section of] the public right of way (being a *insert one of: footpath/bridleway/byway open to all traffic/restricted byway*) shown marked in [red] between the points [A] and [B] on the rights plan is extinguished.~~ The undertaker may, in connection with the carrying out of the authorised project, temporarily stop up each of the public rights of way specified in columns (2) of Schedule 3 (public rights of way to be temporarily stopped up) to the extent specified in column (3), by reference to the letters shown on the temporary stopping up of public rights of way plan.

~~(2) With effect from [that same date] *insert later date* an alternative section of *insert description of right of way of that same type* as marked in [green] between the points [C] and [D] on the rights plan is created.~~

~~(3) In this article—~~

~~“implementation plan” means the written plan agreed between the undertaker and the local highway authority for creation of the agreed alternative right of way to the defined standard; and~~

~~“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.~~

### Temporary stopping up of streets

~~11.11.~~—~~(1)(1)~~ The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, ~~alter or~~ divert and alter any street and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street; and
- (b) subject to paragraph ~~(23)~~, prevent all persons from passing along the street.

(2) Without limiting paragraph (1), the undertaker may, during and for the purposes of carrying out the authorised project, use any street temporarily stopped up, diverted or altered under the powers conferred by this article within the Order limits as a mobilisation area.

~~(3)(2)~~ The undertaker ~~shall~~must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, diversion or alteration ~~or diversion~~ of a street under this article if there would otherwise be no such access.

~~(4)(3)~~ Without ~~prejudice to the generality of~~limiting paragraph (1), the undertaker may temporarily stop up, ~~alter or~~ divert or alter the streets specified in ~~columns (1) and (2)~~column 1 of Schedule ~~D4~~ (SStreets to be *\*temporarily\** stopped up) to the extent specified, by reference to the letters and numbers shown on the ~~works~~*\*streets\** to be *\*temporarily\** stopped up plan, in column (3) of that Schedule.

~~(5)(4)~~ The undertaker ~~shall~~must not temporarily stop up, divert, alter or ~~divert~~use as a mobilisation area—

- (a) any street ~~specified as mentioned~~referred to in paragraph ~~(34)~~ without first consulting the street authority; and
- (b) any other street without the consent of the street authority, which may attach reasonable conditions to ~~any~~the consent.

~~(6)(5)~~ Any person who suffers loss by the suspension of any private right of way under this article ~~shall be~~is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b) that street authority is deemed to have granted consent.

## Access to works

12.—(1) The undertaker may, for the purposes of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of **Schedule E5** (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority in accordance with requirement 22 (highway accesses), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

(2) If the relevant planning authority fails to notify the undertaker of its decision within 28 days of receiving an application for approval under paragraph (1)(b) that relevant planning authority is deemed to have granted approval.

## Agreements with street authorities

~~13.13.—(1)~~(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) ~~the construction of any new street including any structure carrying the street over or under a *insert description of development* authorised by this Order;~~
  - ~~(b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a *insert description of development*;~~~~(c) any stopping up, alteration or diversion of a street authorised by this Order; or any temporary stopping up.~~  
alteration or diversion of a street authorised by this Order; or
  - ~~(b)~~ ~~(d)~~ the carrying out in the street of any of the works referred to in **article 82(1)** (street works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## Application of the 1991 Act

14.—(1) The provisions of the 1991 Act mentioned in paragraph 2 that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

- (a) the carrying out of works under article 9 (street works); and
- (b) the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under article 11 (temporary stopping up of streets)

whether or not the carrying out of the works or the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act are—

- (a) subject to paragraph (3), section 55 (notice of starting date of works);
- (b) section 57 (notice of emergency works);
- (c) section 60 (general duty of undertakers to co-operate);
- (d) section 68 (facilities to be afforded to street authority);
- (e) section 69 (works likely to affect other apparatus in the street);

- (f) section 76 (liability for cost of temporary traffic regulation);
- (g) section 77 (liability for cost of use of alternative route); and
- (h) all provisions of that Act that apply for the purposes of the provisions referred to in subparagraphs (a) to (g).

(3) Sections 55 of the 1991 Act as applied by paragraph (2) has effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

## PART 4

### Supplemental Powers

#### Discharge of water and works to watercourses

15.14. — (1)(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain subject to the obtaining of consent and approval respectively pursuant to sub-paragraphs (3) and (4) below.

(2)(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) ~~shall be~~ determined as if it were a dispute under section 106 of the Water Industry Act 1991~~(a2)~~ (right to communicate with public sewers).

(3)(3) The undertaker ~~shall~~must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but ~~shall~~must not be unreasonably withheld.

(4)(4) The undertaker ~~shall~~must not ~~make~~carry out any ~~opening into~~works to any public sewer or drain pursuant to article 15(1) except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval ~~shall~~must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5)(5) The undertaker ~~shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.~~(6) The undertaker ~~shall~~must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6)(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by ~~section 85(1), (2) or (3) of the Water Resources Act 1991(b) (offences of polluting water)~~regulation 12 of the 2016 Regulations.

(7) Subject to sub-paragraph (8) below and requirements 16 and 25, the undertaker may in connection with the carrying out or maintenance of the authorised project, alter the bed or banks of, and construct works in, under, over or within any watercourse and may divert, alter, interrupt or obstruct the flow of any watercourse within the Order limits.

(8) The undertaker must not:

- (a) undertake any works within 8 metres of, any watercourse forming part of a river, or within 16 metres of a tidally influenced main river without the consent of the

(Z) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37), and Section 35(8)(a) of the Competition and Services (Utilities) Act 1992 (c.43) and amended by sections 32 and 42 of, and paragraph 16(2) of Schedule 3 to, the Flood and Water Management Act 2010 (date in force to be appointed see section 49(3)(h)(i)). There are other amendments to this section which are not relevant to this Order.

Environment Agency, which must not be unreasonably withheld but may be subject to reasonable conditions; and

(b) undertake any works to any ordinary watercourse without the consent of the relevant Internal Drainage Board or Norfolk County Council as the case may be, which must not be unreasonably withheld but may be subject to reasonable conditions.

(9) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to ~~the Homes and Communities Agency~~ a sewerage undertaker, the Environment Agency, ~~a harbour authority within the meaning of section 57 of the Harbours Act 1964(c) (interpretation), an internal drainage board, a joint planning board, or a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and;~~

(b) “ordinary watercourse” has the meaning given in the Land Drainage Act 1991;

(c) (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

~~(10) Protective work to buildings<sup>15</sup>.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.~~

~~(2) Protective works may be carried out—~~

~~(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised project; or~~

~~(b) after the completion of that part of the authorised project in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised project is first opened for use.~~

~~(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.~~

~~(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—~~

~~(a) enter the building and any land within its curtilage; and~~

~~(α) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.~~

~~(β) 1991 c.57, 1991 c.57. Section 85(1) was amended by paragraphs 21(1) and (2) of Part 1 of Schedule 21 to S.I. 2007/3538.~~

~~(γ) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.~~

~~(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it);~~

~~(5) Before exercising—~~

~~(a) a right under paragraph (1) to carry out protective works to a building; (b) a right under paragraph (3) to enter a building and land within its curtilage;~~

~~(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or~~

~~(d) a right under paragraph (4)(b) to enter land,~~

~~the undertaker shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days’ notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.~~

~~(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10~~

~~days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).~~~~(7)~~ The undertaker shall compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights. If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or paragraph (8) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

~~(8) Where—~~

~~(a) protective works are carried out under this article to a building; and~~

~~(b) within the period of 5 years beginning with the day on which the part of the authorised project carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised project;~~

~~the undertaker shall compensate the owners and occupiers of the building for any loss or damage sustained by them.~~

~~(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).~~

~~(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).~~

~~(11) In this article “protective works” in relation to a building means—~~

~~(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised project; and~~

~~(b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised project.~~

#### Authority to survey and investigate the land onshore

~~16.16.—(1)(1)~~ The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

~~(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.~~

~~(2) Any person entering land under this article on behalf of the undertaker—~~

- (a) ~~shall~~must, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

~~(3) No trial holes shall be made under this article—~~ may be made under this article—

(a) in land forming a railway without the consent of Network Rail Infrastructure Limited; or

(b) in land held by or in right of the Crown without the consent of the Crown.

(4) No trial holes may be made under this article—

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority,

but such consent ~~shall~~must not be unreasonably withheld.

~~(5)~~ (5) The undertaker ~~shall~~must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

(a) under paragraph (5)(a) in the case of a highway authority; or

(b) under paragraph (5)(b) in the case of a street authority;

that authority is deemed to have granted consent.

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

## **Removal of human remains**

~~17.17.~~ ~~(1)~~ (1) In this article, “the specified land” means ~~insert description of~~ the land ~~within the Order limits~~.

~~(2)~~ (2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land, it ~~shall~~must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

~~(3)~~ (3) Before any such remains are removed from the specified land, the undertaker ~~shall~~must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

(a) publishing a notice once in each of ~~two~~2 successive weeks in a newspaper circulating in the area of the authorised project; and

(b) displaying a notice in a conspicuous place on or near to the specified land.

~~(4)~~ (4) As soon as reasonably practicable after the first publication of a notice under paragraph (3), the undertaker ~~shall~~must send a copy of the notice to ~~insert the~~ relevant ~~local~~planning authority~~.~~

~~(5)~~ (5) At any time within 56 days after the first publication of a notice under paragraph (3), any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

~~(6)~~ (6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium;

and that person ~~shall~~must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).



~~(7)~~ ~~(7)~~ If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question ~~shall~~must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who ~~shall~~must remove the remains and as to the payment of the costs of the application.

~~(8)~~ ~~(8)~~ The undertaker ~~shall~~must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

~~(9)~~ If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10), the undertaker ~~shall~~must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves ~~shall~~must be re-interred in individual containers which ~~shall~~must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

~~(9)~~ ~~(10)~~ If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker ~~shall~~must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

~~(10)~~ ~~(11)~~ On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation ~~shall~~must be sent by the undertaker to the Registrar General ~~by the undertaker~~ giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) ~~shall~~must be sent by the undertaker to ~~insert the~~ relevant ~~local~~planning authority~~/~~ mentioned in paragraph (4).

~~(11)~~ ~~(12)~~ The removal of the remains of any deceased person under this article ~~shall~~must be carried out in accordance with any directions which may be given by the Secretary of State.

~~(12)~~ ~~(13)~~ Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

~~(13)~~ ~~(14)~~ Section 25 of the Burial Act 1857(~~aa~~) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) ~~shall~~does not apply to a removal carried out in accordance with this article.

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(aa) 1857 c.81. There are amendments to this Act which are not relevant to this Order.

## PART 5

### Powers of Acquisition

#### Compulsory acquisition of land

~~18.18.—(1)(1)~~ The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project ~~or to facilitate, or is incidental, to it~~~~or is required as replacement land~~.<sup>\*, \*</sup>

~~(2) \* (2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act. \* (4) \* This article is subject to \* article 25 (acquisition of land limited to subsoil lying more than 9 metres beneath surface) and article 28 (temporary use of land for carrying out the authorised project). \* This article is subject to \* paragraph (2) of article 20 (compulsory acquisition of rights) and article 26 (temporary use of land for carrying out the authorised project).~~

~~(a) 1857 c.81. There are amendments to this Act which are not relevant to this Order.~~

#### ~~Compulsory acquisition of land—incorporation of the mineral code~~

~~19.[Part(s)] 2 [and 3] of Schedule 2 to the Acquisition of Land Act 1981(a)(minerals) [is/are] incorporated in this Order subject to the modifications that—~~

- ~~(a) paragraph 8(3) is not incorporated;~~
- ~~(b) for “the acquiring authority” substitute “the undertaker”;~~
- ~~(c) [insert additional modifications].~~

#### Time limit for exercise of authority to acquire land compulsorily

~~19.20.—(1)(1)~~ After the end of the period of ~~15 years~~ beginning on the day on which this Order is made—

- (a) no notice to treat ~~shall~~may be served under Part 1 of the 1965 Act; and
- (b) no declaration ~~shall~~may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by **article 2322** (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(~~b~~bb).

(2) The authority conferred by **article 2826** (temporary use of land for carrying out the authorised project) ~~shall cease~~ceases at the end of the period referred to in paragraph (1), ~~save except~~ that nothing in this paragraph ~~shall prevent~~prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

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(bb) 1981 c.66. Sections 2, 6 and 11 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

## Compulsory acquisition of rights

~~20.21.— (1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the *insert name* plan. (2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.~~ (1) The undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this article, article 21 (private rights) and article 29 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 6 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of that Schedule.

~~(3) (3)~~ Subject to section 8 of the 1965 Act, as substituted by ~~article 26 (acquisition of part of certain properties)~~ paragraph 5 of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires an existing right over land or restrictive covenant under paragraph (1), the undertaker ~~shall~~is not ~~be~~ required to acquire a greater interest in that land.

(4) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

~~(5) Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.~~ In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

## Private rights ~~of way~~

~~21.22.— (1)(1)~~ Subject to the provisions of this article, all private rights ~~of way or restrictive covenants~~ over land subject to compulsory acquisition under ~~this Order shall be extinguished~~ article 18 (compulsory acquisition of land) are suspended and unenforceable or, where so notified by the undertaker to the person with the benefit of such private rights or restrictive covenants, extinguished in so far as in either case their continuance would be inconsistent with the acquisition—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry);

whichever is the earlier ~~is~~st.

~~(a) 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.~~

~~(b) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.~~

~~(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes~~  
Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 20 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

(c) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land by agreement); or

(d) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights ~~of way or restrictive covenants~~ over land of which the undertaker takes temporary possession under this Order ~~shall be~~ suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(3) Any person who suffers loss by the extinguishment or suspension of any private right ~~of way or restrictive covenant~~ under this article ~~shall be~~ is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article does not apply in relation to any right ~~of way~~ to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or ~~article 3429~~ (statutory undertakers) applies.

(5) Paragraphs (1) to (3) ~~shall~~ have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land, or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of ~~it~~ the land,

(iii) the undertaker's entry onto ~~it~~ the land, or

(iv) the undertaker's taking temporary possession of ~~it~~ the land

that any or all of those paragraphs ~~shall~~ do not apply to any right ~~of way~~ specified in the notice; ~~and or~~

(b) any agreement made at any time between the undertaker and the person in or to whom the right ~~of way~~ in question is vested or belongs.

(6) If ~~any such an~~ an agreement ~~as is~~ referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right ~~of way~~ is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person;

~~it shall be~~ the agreement is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(7) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

## Application of the Compulsory Purchase (Vesting Declarations) Act 1981

22.23. — (1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) shall apply(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) (2)The Compulsory Purchase (Vesting Declarations) Act 1981,1981 Act, as so applied, ~~shall have~~has effect with the following modifications.

(3) Section\* 5 (earliest date for execution of declaration)\* is omitted.

(4) Section 5A (time limit for general vesting declaration) is omitted(cc).

(5) (3)In section 3 (preliminary notices), for subsection (1) there shall be substituted —“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

(a)given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and(a)1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

(b)published in a local newspaper circulating in the area in which the land is situated.”.

(4)In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5)In that section, for subsections (5) and (6) there shall be substituted —

“(5) For the purposes of this section, a person has a relevant interest in land if—

(a)that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b)that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6)In section\* 5 (earliest date for execution of declaration)\* —

(a)in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and(b)subsection (2) shall be omitted.5B (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent); and

(b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the Norfolk Vanguard Offshore Wind Farm Order 201[X]”.

(6) (7)In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall beare omitted.

(CC) Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c.22)

(7) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(8) ~~(8)~~References to the 1965 Act in the ~~Compulsory Purchase (Vesting Declarations) Act 1981 shall~~1981 Act must be construed as references to that Act as applied by section 125 of the 2008 Act (as modified by article 23 (application of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

#### Application of Part 1 of the Compulsory Purchase Act 1965

23.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent); and

(b) for “the three year period specified in section 4” substitute “the five year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the Norfolk Vanguard Offshore Wind Farm Order 201[X]”.

(3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 19 (time limit for exercise of authority to acquire land compulsorily) of the Norfolk Vanguard Offshore Wind Farm Order 201[X]”

(4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) omit paragraphs 1(2) and 14(2); and

(b) at the end insert—

“PART 4

#### INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 26 (temporary use of land for carrying out the authorised development) or article 26 (temporary use of land for maintaining the authorised development) of the Norfolk Vanguard Wind Farm Order 201[.]”

#### Acquisition of subsoil or airspace only

24.24.—(1)(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil or airspace of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) or article 20 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2)(2) Where the undertaker acquires any part of, or rights in, the subsoil or airspace of land under paragraph (1), the undertaker shallis not be-required to acquire an interest in any other part of the land.

~~(3) Paragraph (2) shall not prevent article 26 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.~~

#### ~~Acquisition of land limited to subsoil lying more than 9 metres beneath surface~~

~~25.—(1) This article applies to the land specified in Schedule F (land of which only subsoil more than 9 metres beneath surface may be acquired).~~

~~(2) In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 18 (compulsory acquisition of land) so much of, or such rights in, the subsoil of the land as may be required for the purposes of the authorised project.~~

~~(3) Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this article applies, the undertaker shall not be required to acquire a greater interest in the land or an interest in any other part of it.~~

~~(4) References in this article to the subsoil of land are references to the subsoil lying more than 9 metres beneath the level of the surface of the land; and for this purpose “level of the surface of the land” means—~~

~~(a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building;~~

~~(b) in the case of a watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level; or~~

~~(c) in any other case, ground surface level.~~

~~Acquisition of part of certain properties~~

~~26.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—~~

~~(α) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and~~

~~(β) a copy of this article is served on the owner with the notice to treat.~~

~~(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter notice”).~~

~~(3) If no such counter notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.~~

~~(4) If such a counter notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter notice, be referred to the tribunal.~~

~~(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—~~

~~(a) without material detriment to the remainder of the land subject to the counter notice; or~~

~~(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter notice and without seriously affecting the amenity and convenience of the house,~~

~~the owner shall be required to sell the land subject to the notice to treat.~~

~~(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—~~

~~(a) without material detriment to the remainder of the land subject to the counter notice; or~~

~~(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter notice and without seriously affecting the amenity and convenience of the house,~~

~~the notice to treat shall be deemed to be a notice to treat for that part.~~

~~(7) If on such a reference the tribunal determines that—~~



~~(a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter notice; but~~  
~~(b) the material detriment is confined to a part of the land subject to the counter notice, the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.~~

~~(8) If the undertaker agrees to take the land subject to the counter notice, or if the tribunal determines that—~~

~~(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter notice or, as the case may be, without material detriment to the remainder of the land subject to the counter notice and without seriously affecting the amenity and convenience of the house; and~~

~~(b) the material detriment is not confined to a part of the land subject to the counter notice,~~

~~the notice to treat shall be deemed to be a notice to treat for the land subject to the counter notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.~~

~~(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any loss or expense occasioned to the owner\* by the giving and withdrawal of the notice\*, to be determined in case of dispute by the tribunal.~~

~~(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.~~

## Rights under or over streets

~~25.27.~~ ~~(1)(1)~~ The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised project.

~~(2)(2)~~ Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

~~(3)(3)~~ Paragraph (2) ~~shall~~does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

~~(4)(4)~~ Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, ~~shall be~~is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

~~(5)(5)~~ Compensation ~~shall be~~is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

## Temporary use of land for carrying out the authorised project

~~26.28.~~ ~~(1)~~(1) The undertaker may, in connection with the carrying out of the authorised project—

- (a) enter on and take temporary possession of —
  - (i) the land specified in columns (1) and (2) of ~~Schedule G~~8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule ~~relating to the part of the authorised project specified in column (4) of that Schedule;~~ and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings and vegetation from that land; ~~and~~
- (c) construct temporary works (including the provision of means of access), running tracks, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a working site with access to the working site in connection with the authorised project; and
- (e) construct any works, or use the land, as specified in relation to that land in column 3 of Schedule 8 (land of which temporary possession may be taken), or any mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker ~~shall~~must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker ~~may~~must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column ~~(4) of Schedule G.~~ (4) of Schedule 8 (land of which temporary possession may be taken), unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) ~~Before~~Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, ~~the undertaker shall~~ remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker ~~shall~~is not ~~be~~ required to ~~replace a building removed under this article.~~ —

- (a) replace any building, structure, drain or electric line removed under this article;
- (b) remove any drainage works installed by the undertaker under this article; or
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 2 (streets subject to street works).

~~(5)~~ The undertaker ~~shall~~must pay compensation to the owners and occupiers of land ~~of~~ which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(5) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, ~~shall~~must be determined under Part 1 of the 1961 Act.

(6) Nothing in this article ~~shall affect~~affects any liability to pay compensation under section ~~10(2)152~~ of the ~~1965~~2008 Act (~~further provisions as to compensation for injurious affection in case where no right to claim in nuisance~~) or under any other enactment in respect of loss or

damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).

(7) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker ~~shall~~is not ~~be~~precluded from—

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under ~~article 24~~20 (compulsory acquisition of rights) to the extent that such land is listed in column (1) of Schedule 6 (land in which new rights etc., may be acquired); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under ~~article 24~~ (acquisition of subsoil or airspace only) ~~or in accordance with article 25 (acquisition of land limited to subsoil lying more than 9 metres beneath surface)~~.

(8) Where the undertaker takes possession of land under this article, the undertaker ~~shall~~is not ~~be~~required to acquire the land or any interest in it.

(9) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) ~~shall~~applyapplies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

### Temporary use of land for maintaining authorised project

~~27.29.~~ ~~(1)~~(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) ~~shall~~does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker ~~shall~~must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker is not required to comply with Paragraph (3) in a case of emergency and if an emergency exists they must—

(a) give to the owners and occupiers of the land in question notice of its intended entry or (as the case may be) of its having entered onto the land as soon as is reasonably practicable; and

(b) comply with Paragraph (1) so far as is reasonably possible in the circumstances.

~~(5)~~ ~~(4)~~The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.

~~(6)~~ ~~(5)~~Before giving up possession of land of which temporary possession has been taken under this article, the undertaker ~~shall~~must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

~~(7)~~ ~~(6)~~The undertaker ~~shall~~must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

~~(8)~~ ~~(7)~~Any dispute as to a person's entitlement to compensation under paragraph ~~(6)~~7, or as to the amount of the compensation, ~~shall~~must be determined under Part 1 of the 1961 Act.

~~(8)~~Nothing in this article ~~shall affect~~affects any liability to pay compensation under section ~~10(2)~~152 of the ~~1965~~2008 Act ~~(further provisions as to compensation for injurious~~

~~affection~~in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (67).

~~(9)~~(9) Where the undertaker takes possession of land under this article, the undertaker ~~shall~~is not ~~be~~ required to acquire the land or any interest in it.

~~(10)~~(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) ~~shall apply~~applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

~~(11)~~(11) In this article “the maintenance period”, in relation to any part of the authorised project, means the period of 5 years beginning with the date on which ~~that part of~~ the authorised project ~~is first opened for use~~first exports electricity to the national electricity transmission network.

#### Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession

28.—(1) This article applies to any Order land specified in Article 28(1)(a)(i) and any other Order land of which the undertaker takes temporary possession under article 28 (Temporary use of land for carrying out the authorised project).

~~(2) Special category land30.—(1) The special category land shall not vest in the undertaker until the undertaker has acquired the replacement land and *insert name of relevant body* has certified that a scheme for the provision of the replacement land as *common/open space/fuel or field garden allotment* has been implemented to its satisfaction.(2) On the requirements of paragraph (1) being satisfied, the replacement land shall vest in *insert name of relevant body* subject to the same rights, trusts and incidents as attached to the special category land; and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(3) In this article — “the special category land” means the land identified as forming part of a common, open space, or fuel or field garden allotment in the book of reference and on the plan entitled “Special Category Land Plan” attached to the land plan, which may be acquired compulsorily under this Order and for which replacement land is to be provided; and~~All private rights or restrictive covenants in relation to apparatus belonging to National Grid removed from any land to which this article applies are extinguished from the date on which the undertaker gives up temporary possession of that land under article 28(3).

(3) The extinguishment of rights by paragraph (2) does not give rise to any cause of action relating to the presence on or in the land of any foundations (save for those which lie less than 1.5 metres underground) and the undertaker is not required to remove foundations when giving up temporary possession).

(4) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before the date that the undertaker gives up temporary possession of the land that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

~~“the replacement land” means the land identified in the book of reference and on the plan entitled “Replacement Land Plan” attached to the land plan.~~

#### **Statutory undertakers**

~~29.31. The undertaker may —~~ Subject to the provisions of Schedule 9 (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plan within the limits ~~of~~to the land to be acquired and described in the book of reference; and
- (b) extinguish the rights of, remove ~~or reposition the apparatus belonging to statutory undertakers shown on the *[insert name]* plan and described in the book of reference; and (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the *[insert name]* plan and described in the book of reference.~~ relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

#### ~~Apparatus and rights of statutory undertakers in stopped-up streets~~

~~32.—(1) Where a street is stopped up under article 9 (stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.~~

~~(2) Where a street is stopped up under article 9, any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker shall—~~

- ~~(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or~~
- ~~(b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).~~

~~(3) Subject to the following provisions of this article, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—~~

- ~~(a) the execution of the relocation works required in consequence of the stopping up of the street; and~~
- ~~(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.~~

~~(4) If in the course of the execution of relocation works under paragraph (2) —~~

- ~~(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus<sup>\*</sup>; or<sup>\*</sup>~~
- ~~(b) <sup>\*</sup>apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was;<sup>\*</sup>~~

~~<sup>\*</sup>and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker<sup>\*</sup>; or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall be reduced by the amount of that excess.~~

~~(5) For the purposes of paragraph (4<sup>\*</sup>) —<sup>\*</sup>~~

- ~~(a) <sup>\*</sup>an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and<sup>\*</sup>~~
- ~~(b) <sup>\*</sup>where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.<sup>\*</sup>~~

~~(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer~~

~~on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.~~

~~(7) Paragraphs (3) to (6) shall not apply where the authorised project constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—~~

~~(a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and~~

~~(b) the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.~~

~~(8) In this article—~~

~~“apparatus” has the same meaning as in Part 3 of the 1991 Act;~~

~~“relocation works” means work executed, or apparatus provided, under paragraph (2); and~~

~~“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151\*(1) of the Communications Act 2003(a).~~

~~(a) 2003 c.21. There are amendments to this Act which are not relevant to this Order.~~

### **Recovery of costs of new connections**

~~30.33.~~ ~~(1)~~ (1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under **article 3129** (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus ~~shall be~~ is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

~~(2)~~ (2) Paragraph (1) ~~shall~~ does not apply in the case of the removal of a public sewer but where such a sewer is removed under **article 31,29 (statutory undertakers)**, any person who is—

(a) the owner or occupier of premises the drains of which communicated with that sewer; or

(b) the owner of a private sewer which communicated with that sewer,

~~shall be~~ is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

~~(3)~~ (3) This article ~~shall~~ does not have effect in relation to apparatus to which ~~article 32 (apparatus and rights of statutory undertakers in stopped-up streets) or~~ Part 3 of the 1991 Act applies.

~~(4)~~ (4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

### **~~Railway and navigation undertakings~~**



## PART 6

### Operations

#### Operation of generating station

~~31.34.— (1) Subject to the following provisions of this article, the undertaker may not under article 8 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—~~

~~(a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person, except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs. — (1) The undertaker is hereby authorised to operate the generating station comprised in the authorised project.~~

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

#### Deemed marine licences under the 2009 Act

~~32.(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act. (3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.~~

~~(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour. The marine licences set out in Schedules 9, 10, 11 and 12 are deemed to have been granted under Part 4 of the 2009 Act (marine licensing) for the licensed marine activities set out in Part 3, and subject to the conditions set out in Part 4, of each licence.~~

## PART 7

### Miscellaneous and General

#### Application of landlord and tenant law ~~35.~~

~~33.— (1)~~ (1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

~~(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall~~ may prejudice the operation of any agreement to which this article applies.

(2) Accordingly, no such enactment or rule of law ~~shall apply~~ applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—



- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease).

### Operational land for purposes of the 1990 Act

~~34.36.~~ Development consent granted by this Order ~~shall be~~<sup>is</sup> treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

### ~~Deemed consent under section 34 of the Coast Protection Act 1949~~

~~37. The undertaker is granted deemed consent under section 34 of the Coast Protection Act 1949(a) to carry out the works described in Schedule H, subject to the requirements set out in that Schedule.~~

### ~~Deemed licence under Part 2 of the Food and Environment Protection Act 1985~~

~~38. The undertaker is granted a deemed licence under Part 2 of the Food and Environment Protection Act 1985(b) to carry out the works described in Schedule I, subject to the requirements set out in that Schedule.~~

### Felling or lopping of trees and removal of hedgerows

~~35.39.—(1)(1)~~ The undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub ~~—(a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or (b) from constituting a danger to passengers or other persons using the authorised project.~~

~~(2) (2)~~ In carrying out any activity authorised by paragraph (1), the undertaker ~~shall~~<sup>must</sup> do no unnecessary damage to any tree or shrub and ~~shall~~<sup>must</sup> pay compensation to any person for any loss or damage arising from such activity.

~~(3) (3)~~ Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, ~~shall~~<sup>must</sup> be determined under Part 1 of the 1961 Act.

~~(4) (a) 1949 c.74. Section 34 has been amended by section 36 of the Merchant Shipping Act 1988 (c.12). There are other amendments to the 1949 Act which are not relevant to this Order. The undertaker may, for the purposes of the authorised project—~~

~~(a) remove any hedgerows within the Order limits and specified in Schedule 13, Part 1 (removal of hedgerows); and~~

~~(b) 1985 c.48. Sections 5 and 6 in Part 2 have been amended by sections 146(2) and 162 of, and Part 8 of Schedule 16 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1985 Act which are not relevant to this Order. remove the important hedgerows as are within the Order limits and specified in Schedule 13, Part 2 (removal of important hedgerows).~~

~~(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997(dd).~~

### Trees subject to tree preservation orders

(dd) S.I. 1997/1160

~~36.40. (1)~~(1) The undertaker may fell or lop any tree ~~described in Schedule J [and identified on the insert name/ plan, within or overhanging land within the Order limits subject to a tree preservation order which was made after 28 February 2017~~ or cut back its roots, if it reasonably believes it to be necessary ~~in order~~ to do so in order to prevent the tree ~~or shrub (a)~~ from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; ~~or (b) from constituting a danger to passengers or other persons using the authorised project.~~

(2) (2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker ~~shall~~must do no unnecessary damage to any tree ~~or shrub~~ and ~~shall~~must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) ~~shall~~does not apply.

(3) (3) The authority given by paragraph (1) ~~shall constitute~~constitutes a deemed consent under the relevant tree preservation order.

(4) (4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, ~~shall~~is to be determined under Part 1 of the 1961 Act.

### Certification of plans etc

~~37.41. (1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—~~

- ~~(a) the book of reference;~~
- ~~(b) the land plan;~~
- ~~(c) the rights plan;~~
- ~~(d) the works plan;~~
- ~~(e) the sections; and~~
- ~~(f) any other plans or documents referred to in this Order, for certification that they are true copies of the documents referred to in this Order —~~ (1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the following for certification that they are true copies of the documents referred to in this Order —

- (a) the environmental statement (document reference 6.1);
- (b) the land plan (document reference 2.2);
- (c) the works plan (document reference 2.4);
- (d) the access to works plan (document reference 2.5);
- (e) the temporary stopping up of public rights of way plan (document reference 2.6);
- (f) the important hedgerows plan (document reference 2.11);
- (g) the book of reference (4.3);
- (h) the outline code of construction practice (8.1);
- (i) the design and access statement (8.3);
- (j) the outline written scheme of investigation (onshore) (8.5);
- (k) the outline written scheme of investigation (offshore) (8.6);
- (l) the outline landscape and ecological management strategy (8.7);
- (m) the outline traffic management plan (8.8);
- (n) the outline travel plan (8.9);
- (o) the outline access management plan (8.10);
- (p) the outline offshore operations and maintenance plan (8.11);
- (q) the outline navigation monitoring strategy (8.18);

- (r) the offshore in principle monitoring plan (8.12);
- (s) the draft marine mammal mitigation protocol (8.13);
- (t) the outline project environmental management plan (document reference 8.14);
- (u) the outline scour protection and cable management plan (document reference 8.16);
- (v) the in principle Norfolk Vanguard Southern North Sea candidate Special Area of Conservation Site Integrity plan (8.17).

(2) A plan or document so certified ~~shall be~~ is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies that provision by a number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

## Arbitration

~~38.42. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the *insert appropriate body*.~~ (1) Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at Schedule 14 of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Where the referral to arbitration under paragraph (1) relates to a difference with the Secretary of State, in the event that the parties cannot agree upon a single arbitrator within the specified time period stipulated in paragraph (1), either party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

(3) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

## Procedure in relation to certain approvals etc

39.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any agreement or approval required or contemplated by any of the provisions of the Order, such agreement or approval must, if given, be given in writing and may not be unreasonably withheld.

(2) Schedule 15 (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 31 in Part 3 of Schedule 1 (requirements).

## Abatement of works abandoned or decayed

40. Where Work No. 1(a) to (e) or Work No. 2 or any part of those works is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, issue a written notice requiring the undertaker at its own expense to repair and

restore or remove Work No. 1(a) to (e) or Work No. 2 or any relevant part of those works, without prejudice to any notice served under section 105(2) of the 2004 Act. The notice may also require the restoration of the site of the relevant part(s) of Work No. 1(a) to (e) or Work No. 2 to a safe and proper condition within an area and to such an extent as may be specified in the notice.

#### Saving provisions for Trinity House

41. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

#### Crown rights

42.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee—

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
  - (i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
  - (ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
  - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

#### Protective provisions

43. ~~Schedule A~~ Schedule 16 (protective provisions) has effect.

### **AUTHORISED PROJECT**

#### **Part 1**

### **AUTHORISED- DEVELOPMENT**

*\*Signed by authority of the Secretary of State for \*Business, Energy & Industrial Strategy*

*Name*

*[NOTE: This Part should describe as fully as possible the elements of the proposed project (including any associated development), which are development for the purposes of section 32 of the 2008 Act, for which development consent is sought. It should not include any elements of development which would be authorised by specific provisions in the Order.]*

#### **Part 2**

~~ANCILLARY WORKS~~*(NOTE: This Part should describe as fully as possible the ancillary works for which consent is sought and which are not)*  
Address Head of [Unit]  
Date Department for Business, Energy & Industrial Strategy