



Hornsea Project Four: Development Consent Order

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Prepared Pinsent Masons, September 2021
Checked Pinsent Masons, September 2021
Accepted Hannah Towner-Roethe, Orsted, September 2021
Approved Julian Carolan, Orsted, September 2021

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HORNSEA PROJECT FOUR OFFSHORE WIND FARM

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HORNSEA PROJECT FOUR OFFSHORE WIND FARM ORDER

EXPLANATORY MEMORANDUM

THE PLANNING ACT 2008

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

REGULATION 5(2)(C)

Applicant: Ørsted Hornsea Project Four Limited
Date: September 2021

CONTENTS

1	GLOSSARY	1
2	INTRODUCTION	4
3	THE PURPOSE AND STRUCTURE OF THIS DOCUMENT	8
4	PURPOSE OF THE ORDER	9
5	PROVISIONS OF THE ORDER	11
6	SCHEDULES	21
	APPENDIX 1 - DESIGN PARAMETERS	31

1. **GLOSSARY**

"1990 Act"	The Town and Country Planning Act 1990 (as amended)
"2008 Act"	The Planning Act 2008 which is the legislation in relation to applications for NSIPs, including pre-application consultation and publicity, the examination of applications and decision making by the Secretary of State.
"2009 Act" "Ancillary Works"	The Marine and Coastal Access Act 2009 Means the ancillary works described in Part 2 of Schedule 1 of the Order.
"APFP Regulations"	The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. Sets out detailed procedures that must be followed for submitting and publicising applications for Nationally Significant Infrastructure Projects.
"Applicant"	Ørsted Hornsea Authorised Project Four Limited.
"Application"	The Application for a Development Consent Order made to the Secretary of State under Section 37 of the Planning Act 2008 in respect of the Authorised Development, required pursuant to Section 31 of the Planning Act 2008 because the Authorised Project is a Nationally Significant Infrastructure Project under Section 14(1)(a) and Section 15 of the Planning Act 2008 by virtue of being an offshore generating station in England or Wales of 100 Megawatts electrical capacity or more.
"Associated Development"	Defined under S.115(2) of The Planning Act 2008 as development which is associated with the principal development and that has a direct relationship with it. Associated development should either support the construction or operation of the principal development or help address its impacts. It should not be an aim in itself but should be subordinate to the principal development.
"Authorised Development"	The development to which the Application relates and refers to the development which requires a DCO and excludes the ancillary works described in Schedule 1, Part 2 of the Order.
"Authorised Project"	The development to which the Application relates and which requires a DCO, as well as the Ancillary Works, all of which are described in parts 1 and 2 of Schedule 1 to the Order.
"Book of Reference"	A reference document providing details of all land ownership interests within the Order Limits and linked to the Land Plans.
"Connection works"	Means Work Nos 6 to 10 described in Schedule 1 of the Order. It also includes related further associated development in connection with those works.

"DCO"	A Development Consent Order made by the relevant Secretary of State pursuant to the Planning Act 2008 to authorise a NSIP. A DCO does or can incorporate or remove the need for a range of consents which would otherwise be required for a development. A DCO can also include powers of compulsory acquisition.
"EIA"	Environmental Impact Assessment. The assessment of the likely significant environmental effects of a development undertaken in accordance with the EIA Regulations.
"EIA Regulations"	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 setting out how the EIA of Nationally Significant Infrastructure Projects must be carried out and the procedures that must be followed.
"ES"	The Environmental Statement documenting the findings of the EIA.
"Explanatory Memorandum"	This document – it explains the intended purpose and effect of a DCO and the authorisations and powers that it seeks.
"Land Plan(s) "	A plan showing all of the land that is required for the Authorised Project and / or over which rights are to be sought as part of the DCO.
"MHWS"	Mean high water springs or the highest level which spring tides reach on average over a period of time.
"MLWS"	Mean low water springs or the lowest level which spring tides reach on average over a period of time.
"MMO"	The Marine Management Organisation.
"NSIP"	A Nationally Significant Infrastructure Project that must be authorised by the making of a DCO under 2008 Act.
"Order"	The Hornsea Project Four Offshore Wind Farm Order, being the DCO that would be made by the Secretary of State authorising the Authorised Project, a draft of which has been submitted as part of the Application.
"Order Limits"	The limits of the land to which the Application for the DCO relates and shown on the Order limits and grid coordinates plan and the onshore Order limits plan within which the Authorised Project must be carried out and which is required for its construction and operation.
"PINS"	The Planning Inspectorate. A Government agency responsible for receiving and administering the acceptance and examination of applications for NSIPs on behalf of the Secretary of State.
"Relevant Planning Authority"	Means East Riding of Yorkshire Council.
"Requirements"	The 'requirements' at Schedule 1, Part 3 to the draft Order that, amongst other matters, are intended to control the final details of the Authorised Project as to be constructed

and also to control its operation, amongst other matters to ensure that it accords with the EIA and does not result in unacceptable impacts.

"SoS"

The Secretary of State. The decision maker for DCO applications and head of a Government department. In this case the SoS for the Department for Business, Energy and Industrial Strategy

"Statement of Reasons"

A statement setting out the reasons and justification for the compulsory acquisition of land or rights in land within the Order Limits.

"Undertaker"

Means the Applicant or such other person who takes benefit of the DCO following the procedure within Article 5 of the Order.

"Works Plans"

Plans showing the numbered works referred to at Schedule 1 to the Order and submitted with the Application.

The definitions included in Article 2 of the Order apply to the terminology used in this document. Where a specific term of not defined in this glossary the reader should refer to this Article.

2. INTRODUCTION

Overview

- 2.1 This Explanatory Memorandum has been prepared on behalf of Ørsted Hornsea Project Four Limited (the 'Applicant'). It forms part of the application (the 'Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy, under section 37 of 'The Planning Act 2008' (the '2008 Act').
- 2.2 The Applicant is seeking development consent for an offshore generating station and all infrastructure required to transmit the power generated to the existing Creyke Beck National Grid substation (the 'Authorised Project'). It will comprise a maximum of 180 wind turbine generators. The Authorised Project array area is approximately 468 km², and will be located approximately 69 km from the East Riding of Yorkshire coast in the southern North Sea.
- 2.3 A DCO is required for the Authorised Project as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (a 'NSIP') under sections 14 and 15(3) of the 2008 Act.
- 2.4 The DCO, if made by the SoS, would be known as the Hornsea Project Four Offshore Wind Farm Order (the "Order").

Ørsted Hornsea Project Four Limited

- 2.5 The Applicant's ultimate parent company is Ørsted A/S which specialises in procuring, producing, distributing and trading energy and related products in Northern Europe. Further details on the corporate structure between Ørsted A/S and the Applicant is included in the funding statement.
- 2.6 Ørsted A/S is the world leader in the development, construction and operation of offshore wind farms, with more than 20 years' experience and a strong track record delivering successful projects.
- 2.7 In the UK, Ørsted has 12 operational offshore wind farms that it either owns or partly owns, one wind farm under construction and a further three in its development pipeline. Ørsted's current installed capacity in the UK is 4,921MW which is enough green energy to power over 4.4 million UK homes a year.

The Order limits

- 2.8 The Authorised Project will be constructed, operated and maintained within the Order Limits. The Order Limits comprise of the following areas:
- 2.8.1 Offshore wind farm array area: This is where the offshore wind farm will be located, which will include the wind turbines, array cables, offshore accommodation platforms and a range of offshore substations as well as offshore and export cables. This area is approximately 468 km² and will be located approximately 69 km off the Yorkshire coast. The Hornsea Project Four array area will lie to the north west of Hornsea Project One, Hornsea Project Two and Hornsea Three offshore wind farms;
- 2.8.2 Offshore export cable corridor: This is where the permanent offshore electrical infrastructure (offshore export cable(s), as well as the offshore HVAC booster station(s) and their foundations, if required) will be located and extends from the southern boundary of the Hornsea Project Four array area in a south westerly direction to the Norfolk coast. The Hornsea Project Four offshore cable corridor is approximately 163 km in length. In addition, there is a temporary working area adjacent to the offshore export cable corridor; and
- 2.8.3 Onshore order limits: This is where the permanent onshore electrical infrastructure (onshore export cable(s)), onshore HVDC converter/HVAC substation and connections to the National Grid will be located.

- 2.9 Taken together these areas form the Order Limits and are shown on the offshore Order limits and grid coordinates plan and onshore Order limits plan.

The Authorised Project

- 2.10 The main components of the Authorised Project are summarised below:
- 2.10.1 Work No.1: consists of the nationally significant infrastructure project, being the offshore wind turbine generating station comprising up to 180 wind turbine generators and an offshore accommodation platform and a network of cables between the wind turbine generators and Work No.2.
 - 2.10.2 The description of Work No.1 refers to the wind generating station having a gross electrical output of over 100 megawatts. This is consistent with sections 14 and 15 of the 2008 Act which stipulates that an offshore windfarm which exceeds an electrical capacity of 100 megawatts will be a nationally significant infrastructure project and therefore development consent will be required. The description of Work No.1 does not refer to an upper limit on the capacity of the generating station that development consent is being sought for. It is not considered that imposing an upper limit is desirable or necessary. The DCO includes parameters in which the Authorised Project must be constructed and it is on this basis which the environmental impact assessment has been undertaken. There is no reason to limit the electrical output capacity of the Authorised Project provided the parameters of development are not exceeded. There are advantages in not imposing an upper limit so that the Undertaker can take advantage of technical advancements that emerge in the coming years in terms of wind turbine efficiency which would enable it to still construct the Authorised Project within the existing parameters but to increase capacity beyond the capacity which is currently anticipated based on existing technology.
 - 2.10.3 It is currently anticipated, when completed, the Authorised Project will have a total capacity of approximately 2.6 GW. However, Orsted does not wish to limit the development to this capacity and this is the reason that the description of the NSIP in Schedule 1 has been adopted. This approach has been accepted by the SoS in the Hornsea Three Offshore Wind Farm Order 2020 and the Cleve Hill Solar Park Order 2020.
- 2.11 The 'Associated Development', for the purposes of section 115 of the 2008 Act comprises Work Nos. 2 to 10 of the Authorised Project. They are as follows:
- 2.11.1 Work No.2 - up to six small offshore transformer substations, up to three large offshore substations and up to either three large HVDC converter substations or six small HVDC converter substations. In either case the substations may be connected to each other or the offshore accommodation platform. Work No.2 also includes a network of cables, up to 6 cable circuits consisting of the offshore export cables and eight temporary horizontal directional drilling exit pits;
 - 2.11.2 Work No.3 - in the event that the mode of transmission is HVAC, up to three HVAC booster substations, a network of cables between the HVAC booster substations and up to six cable circuits consisting of offshore export cables;
 - 2.11.3 Work No.4 - temporary work area associated with Work No.2 and No.3 for vessels to carry out anchoring and positioning alongside Work No.2 and Work No.3;
 - 2.11.4 Work No.5 – works comprising up to six cable circuits and ducts, up to eight horizontal directional drilling exit pits and up to eight horizontal directional drilling launch pits;
 - 2.11.5 Work No.6 – connection works consisting of up to six underground cable circuits, associated ducts to Work No.7, up to eight transition joint bays, onshore construction works, 240 link boxes and 240 joint bays;
 - 2.11.6 Work No.7 – onshore connection works which consist of an onshore HVDC/HVAC substation, energy balancing infrastructure, up to six cable circuits and associated electrical

circuit ducts, vehicular access tracks and footpaths, a water attenuation feature, landscaping and onshore construction works;

2.11.7 Work No.8 –connection works consisting of up to four underground cable circuits and associated electrical circuit ducts between Work No.7 and the Creyke Beck National Grid substation, including a connection above ground and electrical engineering works within or around the National Grid substation buildings and compound, and onshore construction works;

2.11.8 Work No. 9 – temporary works including vehicular access tracks, a temporary works area to support the construction activities in Work No.7, temporary logistics compounds to support construction of Work Nos 5, 6, 7 and 8 and a temporary construction ramp;

2.11.9 Work No. 10 — vehicular access tracks to serve Work No.7 and an extension to a layby;

2.12 The Associated Development includes in connection with such Work Nos. 1 to 5 such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

2.12.1 scour protection around the foundations of the offshore structures;

2.12.2 cable protection measures such as the placement of rock, split pipe system and/or concrete mattresses;

2.12.3 cable crossings;

2.12.4 the removal of material from the seabed within the Order limits required for the construction of Work Nos. 1 to 5 and the disposal within Work No. 1 of up to 7,300,596 cubic metres of inert material of natural origin and the disposal within Works Nos. 2, 3 and 4 up to 4,491,735 cubic metres of inert material of natural origin both produced during construction drilling, seabed preparation for foundation works cable installation preparation works (such as sandwave clearance and boulder clearance) and excavation or horizontal directional drilling pits; and

2.12.5 removal of static fishing equipment;

2.13 Further in connection with such Work Nos. 6 to 10 such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

2.13.1 ramps, bridges, means of access and footpaths and footpath enhancement;

2.13.2 bunds, embankments, swales, landscaping, signage, fencing and boundary treatments;

2.13.3 habitat creation and enhancement;

2.13.4 joint bays, link boxes, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable marker, tiles and tape, and lighting and other works associated with cable laying;

2.13.5 works for the provision of apparatus including cabling, water and electricity supply works, foul drainage provision, surface water management systems and culverting;

2.13.6 works to alter the position of apparatus, including mains, sewers, drains and cables;

2.13.7 works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;

2.13.8 landscaping and other works;

- 2.13.9 works to mitigate any adverse effects of the construction, maintenance or operation of the authorised project;
 - 2.13.10 works for the benefit or protection of land affected by the authorised project;
 - 2.13.11 working sites in connection with the construction of the authorised project, construction lay down areas and compounds, storage compounds and their restoration; and
 - 2.13.12 enhancement.
- 2.14 In addition the Order is proposed to grant consent for the Ancillary Works, which comprise:
- 2.14.1 temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development;
 - 2.14.2 marking buoys, beacons, fenders and other navigational warning or ship impact protection works; and
 - 2.14.3 temporary works for the benefit or protection of land or structures affected by the authorised development.
- 2.15 It is anticipated that subject to the DCO having been made by the SoS, construction work on the Authorised Project would commence in 2024. The construction phase would be for a period of up to 61 months.
- 2.16 A more detailed description of the Authorised Project is provided at Schedule 1 'Authorised Project' of the draft DCO and Chapter 3 of the ES Volume 1 (Application Document Ref. A1.4) and the areas within which each of the main components of the Authorised Project are to be built is shown by the coloured and hatched areas on the Works Plans (Application Document Refs. D1.4.1 and D1.4.2).

Parameters in the Order

- 2.17 The Authorised Project described in Schedule 1 (part 1 and part 2) of the Order and the design parameters secured in requirements 2 to 5 of Schedule 1 (part 3) is to provide flexibility in the delivery of the Authorised Project. This approach has been recognised as appropriate for a wide range of NSIPs and is described in PINS Advice Note 9: Rochdale Envelope (July 2018).
- 2.18 The parameters included in the Order are set out in Appendix 1 to this document. They include the following parameters:
- 2.18.1 Maximum number of Wind turbines generators ("WTG");
 - 2.18.2 Maximum dimensions of WTG;
 - 2.18.3 The foundation parameters of WTG;
 - 2.18.4 Separation distances between WTG;
 - 2.18.5 Maximum number of offshore substations and offshore accommodation platforms;
 - 2.18.6 Maximum dimensions of offshore substations and offshore accommodation platforms;
 - 2.18.7 The foundation parameters of offshore substations and the offshore accommodation platform; and
 - 2.18.8 The number and length of cable systems and volume of cable protection for the cable systems.

2.19 The above parameters have been applied to the environmental impact assessment prepared and presented in the Environmental Statement submitted with the Application. It is appropriate to impose these design parameters to ensure that the final development that is constructed has been subject to full environmental impact assessment.

3. THE PURPOSE AND STRUCTURE OF THIS DOCUMENT

3.1 This Explanatory Memorandum is prepared to explain the purpose and effect of each article of, and the Schedules to, the draft Order, as required by Regulation 5(2)(c) of the APFP Regulations.

3.2 It also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 ('the model provisions'). Whilst the power for the SoS to designate, and the requirement to have regard to, model provisions have been removed by the Localism Act 2011, the Applicant considers it is still relevant to note and explain variations made in the Order compared to the model provisions.

3.3 The Order includes a number of provisions to enable the construction, maintenance and operation of the Authorised Project. These are briefly described below and then considered in more detail in the following sections:-

3.3.1 Part 1: Article 1 sets out what the Order may be cited as and when it comes into force. Article 2 sets out the meaning of various terms used in the Order;

3.3.2 Part 2: Articles 3 to 4 provide development consent for the Authorised Project, and allow it to be constructed and maintained. Article 5 sets out who has the benefit of the powers of the Order and how those powers can be transferred. Articles 6 and 7 relate to application and modification of legislative provisions and defence to proceedings in statutory nuisance respectively;

3.3.3 Part 3: Articles 8 to 14 provide a suite of powers in relation to street works. The powers include the ability for the undertaker to be able to carry out works to and within streets, create or improve accesses, to temporarily stop up streets and to be able to divert and temporarily stop up public rights of way and access land;

3.3.4 Part 4: Articles 15 to 17 set out three supplemental powers relating to discharge of water, protective work to buildings and authority to survey and investigate land onshore;

3.3.5 Part 5: Articles 18 to 31 provide for the undertaker to be able to compulsorily acquire the Order land and rights over/within it, and to be able to temporarily use parts of the Order land for the construction or maintenance of the Authorised Project. The provisions provide for compensation to be payable to affected persons in respect of these powers, where that is not already secured elsewhere. These articles also provide for powers in relation to equipment of statutory undertakers;

3.3.6 Part 6: Articles 32 and 33 provide powers for the operation of the generating station and the provision of the deemed marine licences in Schedules 11 and 12 of the Order.

3.3.7 Part 7: Articles 34 to 48 include various general provisions in relation to the Order:-

(a) Articles 34 to 43 includes provisions such as application of statutes relating to leases, that the Order land will be 'operational land', felling and lopping of trees and removal of hedgerows, certification of documents relevant to the Order, arbitration in case of disagreements under the Order, an ability to use the appeal mechanism in s.78 of the 1990 Act where a party either refuses or withholds consent required under a requirement attached to the DCO, abatement of works abandoned or decayed, saving provisions for Trinity House, and a provision in respect of Crown land.

(b) Article 44 provides protection for statutory undertakers through the protective provisions (set out in Schedule 9);

- (c) Article 45 provides a requirement for the undertaker to put into place a guarantee or alternative form of security in advance of exercising powers under Part 5 of the Order;
- (d) Article 46 provides for modifications to the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (set out in Schedule 13);
- (e) Article 47 provides for methods of service of notices in relation to the DCO; and
- (f) Article 48 releases the undertaker from the obligations of certain agreements under section 106 of the Town and Country Planning Act 1990 which relate to other development and would otherwise be automatically binding on the Applicant.

3.4 Schedules: there are 15 Schedules to the Order, providing for the description of the Authorised Project (Schedule 1), the requirements (a form of control akin to planning conditions) applying to it (Part 3 of Schedule 1), matters in relation to streets and public rights of way and accesses (Schedules 2 to 5), land in which new rights may be acquired (Schedule 6), amendments to statutes to ensure appropriate compensation is payable where new rights over land are acquired under the Order (Schedule 7), land which may be used temporarily for the Authorised Project (Schedule 8), provisions protecting statutory undertakers and their apparatus (Schedule 9), list of hedgerows that may be removed pursuant to article 36 (Schedule 10), the deemed marine licences (Schedules 11 and 12), certain modifications to the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (Schedule 13) the Arbitration Rules (Schedule 14) and Documents to be certified (Schedule .

4. **PURPOSE OF THE ORDER**

- 4.1 As the Authorised Project is an offshore generating station with a capacity of over 100 MW, in England, it is a NSIP under sections 14(1)(a) and 15 of the 2008 Act. The Applicant therefore requires development consent under the 2008 Act in order to construct and operate the Authorised Project. Development consent may only be granted by order, following an application to the SoS (section 37 of the 2008 Act).
- 4.2 The Applicant is therefore making the Application to the SoS for a development consent order for the construction, maintenance and operation of an offshore wind turbine generating station.
- 4.3 The Order refers to the person authorised to exercise the powers in the Order as 'the undertaker', and defines the undertaker as Ørsted Hornsea Project Four Limited.
- 4.4 In addition to providing for the construction and operation of the Authorised Project, the Order will, in accordance with section 122 and section 120(3) / Schedule 5 of the 2008 Act, authorise the acquisition of land and rights over land, and the extinguishment of, or interference with, interests in or rights over land. The Book of Reference (Application Document Ref. E1.3) sets out a description of the land and interests included in the Order, and this is shown on the Land Plans (Application Document Ref. D1.3.1). The Order provides for the areas which can be compulsorily acquired and what rights can be acquired, and what other rights and interests will be affected. The Order and the Book of Reference should be read together with the Statement of Reasons (Application Document Ref. E1.2) which accompanies the Application and sets out the justification for the acquisition or interference with the Order land.
- 4.5 The matters for which development consent is sought are summarised in paragraph 4.7 below and described more formally in Schedule 1 to the Order.
- 4.6 Section 115(1) of the 2008 Act provides that development consent may be granted for "(a) development for which development consent is required, or (b) associated development". The SoS must therefore be satisfied that all the elements included within the 'Authorised Project' are either part of the NSIP or are associated development, in order to include them in the Order pursuant to section 115 of the 2008 Act.

- 4.7 The generating station and related development within Work No. 1 constitutes "development for which development consent is required" (as a NSIP, as set out above), and the Order also includes other development which is Associated Development (i.e. not an integral part of the NSIP itself) which are included at Work No. 2 to Work No.10. The Applicant has considered these works against the policy and criteria in DCLG 'Guidance on associated development applications for major infrastructure Authorised Projects' (April 2013) - it is clear that all of these works come within the guidance and are clearly capable of being granted development consent by the SoS pursuant to section 115.
- 4.8 The approach taken by the Applicant between those parts of the Authorised Project which form the NSIP and those parts that form Associated Development follows the approach taken by all DCO applications for offshore windfarms to date. It is also based on the distinction between generation and transmission assets under the Offshore Transmission Operator regime. This regime is regulated by the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015 and requires, after construction, for the transmission assets to be owned and operated separately from the generating station.
- 4.9 In particular, Work Nos. 2 to Work No.10 are all:
- 4.9.1 directly associated with the NSIP, as they are all required to support the construction, maintenance or operation of the offshore wind turbine generating station, or to mitigate its impacts (paragraph 5(i) of the Guidance);
 - 4.9.2 subordinate to the NSIP - none of them are an aim in themselves (paragraph 5(ii));
 - 4.9.3 proportionate to the nature and scale of the NSIP (paragraph 5(iv)); and
 - 4.9.4 of a nature which is typically brought forward alongside an offshore wind turbine generating station (paragraph 6);
 - 4.9.5 listed in or analogous to the types of associated development listed in Annexes A and B to the Guidance. Those annexes mention (of relevance to Work No. 2 to Work No. 10):
 - (a) "Temporary haul roads" would include temporary vehicular access tracks (Work No. 9);
 - (b) "Lay down areas" would include temporary storage areas and construction compounds to assist with the onshore connection works (Work No 9);
 - (c) "Connection to Electricity Networks" and "underground lines" would include connection works (Work Nos. 6, 7 and 8);
 - (d) Hard and soft landscaping would include landscaping and other works to mitigate adverse impacts;
 - (e) "Onshore substations" would include a HVDC/HVAC substation (Work No. 7);
 - (f) "Sea/land cable interface buildings and structures" would include offshore transformer substations and offshore HVDC convertor substations (Work No. 2);
 - (g) "Sea/land cable interface buildings and structures" would include HVAC booster substations" (Work No. 3); and
 - (h) "Jointing pits" would include joint bays and link boxes (Work No. 6).
- 4.10 A more detailed description of the various elements of the Authorised Project is provided in Chapter 4 of the ES (Volume 1, Application Document Ref. A1.4).

5. PROVISIONS OF THE ORDER

5.1 The Order consists of 48 operative provisions, each referred to as articles, and 15 Schedules. The articles are considered below in numerical order (split between the 'Parts' of the Order), and Schedules are considered along with the article which introduces them or to which they relate.

Part 1 (Preliminary) and Part 2 (Principal Powers)

5.2 Articles 1 (*Citation and commencement*) and 2 (*Interpretation*) are preliminary provisions. Article 1 provides for the way in which the Order should be cited and when it takes effect.

5.3 Article 2 provides for the interpretation of the rest of the Order, including the Schedules. Where appropriate some Schedules also contain provisions setting out what terms mean in the relevant Schedule. Article 2 makes alterations to the model provisions to accommodate the departures from the model provisions elsewhere in the Order, and to add required definitions, including:-

5.3.1 Definitions of documents submitted as part of the Application and which are referred to in the Order have been added;

5.3.2 A definition of "commence" has been added to the Order, which excludes onshore site preparation works. The effect of the definition is that certain 'carved out' works can be carried out prior to the requirements contained in Schedule 1 to the Order being discharged. The ability to do this is of critical importance to the Applicant in the context of the envisaged construction programme. It is considered that the works that are 'carved out' would not have any impact on the effectiveness of the requirements from an environmental protection perspective. The Applicant notes the definition of 'commence' was deleted by the Secretary of State when the A160/A180 (Port of Immingham Improvement) Development Consent Order 2015 was made. Highways England (the promoter of that scheme) drew the Secretary of State's attention to the consequences of this and a Correction Order was made, amending some of the requirements, and it was recognised by the Secretary of State in the Correction Notice that the deletion of the definition of 'commence' had 'the unintended consequence of removing an acceptable degree of flexibility in the implementation of the project and that this is a correctable error for the purposes of Schedule 4 to the Planning Act 2008';

5.3.3 A definition of "maintain" has been added to make clear what is authorised under article 4 (see below), and in particular that it does not permit the undertaker to carry out any maintenance operations which would cause different environmental effects to those identified in the ES (Application Document Ref. A);

5.3.4 The "undertaker" is defined as Ørsted Hornsea Project Four Limited, who has the benefit of the provisions of the Order, subject to the provisions of article 5 (see below).

5.4 Article 3 (*Development consent etc granted by the Order*) grants development consent for the Authorised Development and consent for the ancillary works. Together the Authorised Development and the Ancillary Works form the Authorised Project. Schedule 1 describes the Authorised Project in detail, split into 'work numbers', each of which represents different sections or parts of the Authorised Project. This split of the Authorised Project between different work numbers enables the Order to refer to different parts of the Authorised Project by citing the relevant work number. In respect of Work Nos 1 to 5 these must be constructed seaward of MHWS and Work Nos 6 to 10 must be constructed landward of the MLWS.

5.5 Article 4 (*Power to maintain authorised project*) provides for the maintenance of the Authorised Project. Article 4 reflects the terms of the model provisions, but text has been added to make it clear that the powers conferred by the Article do not negate the need for the undertaker to obtain further marine licences for offshore works not covered by the deemed marine licences included in the Order. This approach is precedented and the article is included in The East Anglia Three Offshore Wind Farm Order 2017 and the Hornsea Three Offshore Wind Farm Order 2020.

- 5.6 Article 5(1) (*Benefit of Order*) overrides Section 156(1) of the 2008 Act (which is permitted by Section 156(2)) and provides that the benefit of the Order is for the undertaker, rather than anyone with an interest in the land.
- 5.7 Given the nature of the authorised development and the fact that powers of compulsory acquisition are sought it would be impracticable and inappropriate for the Order to be 'open' as to who may implement it, as might occur without this provision. Overriding section 156(1) is common in DCOs that have been made, including the Walney Extension Offshore Wind Farm Order 2014, the East Anglia Three Offshore Wind Farm Order 2017 and the Hornsea Three Offshore Wind Farm Order 2020.
- 5.8 Article 5 provides that the undertaker can, with the written consent of the SoS, either transfer the benefit of the Order and/or grant to another person the benefit of the provisions of the Order and such related statutory rights as may be agreed. The Order includes drafting which makes it clear that the provisions of Article 5 apply to the Deemed Marine Licences and can be applied either whole or in part. The requirement to obtain the consent of the SoS is unnecessary under the circumstances referred to in sub paragraph (8) of the Article. They include the following:
- 5.8.1 where the transferee or lessee is a holder of a licence under the Electricity Act 1989; and
- 5.8.2 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.
- 5.9 The 2009 Act includes provisions relating to the transfer of a Deemed Marine Licence. This article makes it clear that the procedure included in sections 72(7) and (8) of that Act do not apply.
- 5.10 Article 5 includes a procedure to be adopted when making an application to the Secretary of State for consent. So far as we are aware this approach is not precedented but has been developed by the Applicant and its advisors on the basis of experience on other projects. It is considered necessary to provide certainty in the absence of any other statutory procedure for obtaining consent. The essential elements of this procedure are as follows:
- 5.10.1 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;
- 5.10.2 The SoS may not provide consent before consulting the MMO;
- 5.10.3 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;
- 5.10.4 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 8 to 10 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.
- 5.11 Article 5(6) provides that where the Undertaker has transferred the benefit of the Order or granted the benefit of the Order to a lessee then:
- 5.11.1 the transferred benefit will include any rights that are conferred and any obligations that are imposed;
- 5.11.2 the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the undertaker;
- 5.11.3 the benefits or rights conferred under sub paragraph (1) of the article is subject to the same restrictions, liabilities and obligations as applies to the Undertaker.

- 5.12 Article 5, with the exception of the procedure explained in paragraph 5.10, is precededented, see for example the East Anglia Three Offshore Wind Farm Order 2017 and the Hornsea Three Offshore Wind Farm Order 2020.
- 5.13 Article 6 (*application and modification of legislative provisions*) has the effect of dis-applying legislative provisions as they would apply but for this article.
- 5.13.1 Article 6(1)(a) dis-applies the provisions of regulation 6 of the Hedgerows Regulations 1997 and allows those hedgerows specified in Schedule 10 of the Order to be removed so as to allow the Applicant to carry out the Authorised Project. The form of wording used in this article is precededented and has been used in many made orders, including the Walney Extension Offshore Wind Farm Order 2014, the East Anglia Three Offshore Wind Farm Order 2017 and the Hornsea Three Offshore Wind Farm Order 2020.
- 5.13.2 Article 6(1)(b) dis-applies provisions of the Neighbourhood Planning Act 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 Applicant's rationale for this is that the provisions relating to temporary possession in the Neighbourhood Planning Act 2017 have not yet come into force and that regulations required to provide more detail on the operation of the regime have not yet been made. As such, it is considered appropriate to apply the 'tried and tested' temporary possession regime which has been included in numerous DCOs and Orders made under the Transport and Works Act 1992 to date. The form of wording in this article is precededented and has been used in the Port of Tilbury (Expansion) Order 2019 and the Hornsea Three Offshore Wind Farm Order 2020. Additionally, provisions with the same effect are included in Articles 27(13) and 28(12) of the Millbrook Gas Fired Generating Station Order 2019 and Article 26(12) of the Eggborough Gas Fired Generating Station Order 2018.
- 5.13.3 Article 6(1)(c) to (g) disapplies certain provisions relating to the need for an environmental permit under the Environmental Permitting (England and Wales) Regulations 2016 in relation to flood risk activities, as well as certain byelaws and regulations regarding watercourses. This is unprecedented but has been agreed by the Environment Agency in accordance with section 150 of the 2008 Act. In addition, this wording has been proposed by the applicant for the Norfolk Boreas Offshore Wind Farm Order.
- 5.14 Article 7 (*Defence to proceedings in respect of statutory nuisance*) provides that no one is 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 construction or maintenance or decommissioning 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 which cannot be reasonably avoided as a consequence of the Authorised Project. Article 7 is a model provision.

Part 3 (Streets)

- 5.15 Article 8 (*Street works*) is a model provision and authorises the undertaker to carry out various works within the streets specified in Schedule 2 of the Order, which are within the Order limits. The works permitted by the article include (a) breaking up or opening a street, or sewer, drain or tunnel, (b) tunnel or boring under a street, (c) placing apparatus under a street or maintaining apparatus under a street or changing its position. The right given by the article is a statutory right for the purposes of 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991.
- 5.16 Article 9 (*application of the 1991 Act*) confirms that some of the provisions of the New Roads and Street Works Act 1991 apply to the carrying out of street works under article 8 and the temporary stopping up, alteration or temporary diversion of a street under article 10. The relevant provisions are referred to in sub-paragraph 2 of the Article. This is not a model provision but is precededented in the Hornsea Two Offshore Wind Farm Order 2016, the Hornsea One Offshore Wind Farm Order 2014 and the Hornsea Three Offshore Wind Farm Order 2020.

- 5.17 Article 10 (*Temporary stopping up of streets and public rights of way*) provides for the temporary stopping up, alteration or diversion of any streets or public rights of way for the purposes of carrying out the Authorised Project.
- 5.18 This article largely follows the approach set out in the model provisions, save for:
- 5.18.1 There is an additional power given to the Undertaker which allows it to use any street or public right of way temporarily stopped up as a temporary working site. The Undertaker may not use any street which is referenced in Schedule 3 without first consulting the street authority and any other street without having obtained the consent of the street authority who may attach reasonable conditions and such consent is subject to deemed consent provisions if the street authority does not notify the Applicant of its decision within 28 days of receiving an application;
- 5.18.2 The model provisions provide that where the street is specified in a Schedule to the Order that there is a requirement to consult the street authority, but there would be no need to obtain its consent. In respect of other streets, not specified in a schedule to the Order there would be a requirement to obtain the consent of the street authority. This mirrors Article 11 of the model provisions.
- 5.19 Article 11 (*Stopping up and diversion of public rights of way*) allows the Undertaker, where it is in connection with the carrying out of the Authorised Project, to temporarily stop up or divert a public right of way where it is specified in Schedule 4 of the Order to the extent stipulated in the same schedule. This article is not a model provision, but it is preceded in the East Anglia Three Offshore Wind Farm Order 2017 and the Hornsea Three Offshore Wind Farm Order 2020. On 18 August 2020, the Secretary of State for Environment, Food and Rural Affairs announced his decision to approve a stretch of the England Coast Path in North Yorkshire and East Riding of Yorkshire between Easington and Filey Brigg which includes part of the Order Limits. However, the new stretch of coast path within the Order Limits is not yet available for public use. It is likely that the coast path will be open to the public during the construction of Hornsea Four and provisions have therefore been included in Article 11 to enable to undertaker to temporarily interfere with such public rights of access if necessary.
- 5.20 Article 12 (*Access to works*) is a model provision which permits the undertaker to form new or to improve existing means of access in the locations specified in Schedule 5 of the Order. Other means of access or works can also be provided in other locations reasonably required for the Authorised Project with the approval of the Relevant Planning Authority, in consultation with the highway authority. The Undertaker has included an additional provision in sub paragraph (2) of the article which provides where consent is required from the Relevant Planning Authority but that is not given within 28 days of it receiving the application then the Relevant Planning Authority is deemed to have provided consent. This is not a model provision, but is preceded in the Hornsea One Offshore Wind Farm Order 2014, the East Anglia Three Offshore Wind Farm Order 2017 and the Hornsea Three Offshore Wind Farm Order 2020.
- 5.21 Article 13 (*Agreements with street authorities*) is a modified model provision. The article included in the Order allows street authorities and the Undertaker to enter into agreements relating to any stopping up, alteration or diversion of a street and the carrying out of any works referred to in Article 8(1). The Applicant has removed reference to the ability to enter into an agreement with a street authority to allow the construction of any new street and the maintenance of any bridge or tunnel carrying a street over or under the Authorised Project as those powers are not required for the Authorised Project. This same approach was taken in the Hornsea One Offshore Wind Farm Order 2014, the East Anglia Three Offshore Wind Farm Order 2017 and the Hornsea Three Offshore Wind Farm Order 2020.
- 5.22 Article 14 (*Power to alter layout etc. of streets*) allows for the alteration of the layout of any street for the purposes of construction, operation or maintenance, subject to obtaining the consent of the street authority and to the restoration of such streets to the reasonable satisfaction of the street authority. Similar wording has been used in other made Orders, including the Hirwaun Generating Station Order 2015, the Millbrook Gas Fired Generating Station Order 2019, the Eggborough Gas Fired Generating Station Order 2018 and the Hornsea Three Offshore Wind Farm Order 2020.

Part 4 (Supplemental Powers)

- 5.23 Article 15 (*Discharge of water*) is a model provision which 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 of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. The reference from the model provisions to s.85 of the Water Resources Act 1991 has been deleted as this section has now been repealed - this has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead. The article has also been updated to reflect the current approach to the drafting of statutory instruments and so that if the Undertaker makes an application for consent under the provisions of the article but the relevant party does not provide notification of its decision within 28 days of the Undertaker's application then consent will have been deemed to have been given.
- 5.24 Article 16 (*Protective work to buildings*) is a model provision that allows the Undertaker, at its own expense, to carry out protective works to any building within the Order limits. Such protective works can be undertaken at any time before or during the carrying out in the vicinity of the relevant building works forming part of the Authorised Project. Protective works can also be undertaken after the carrying out of the works forming part of the Authorised Project for a period of 5 years from the day on which that part of the Authorised Project was first opened for use.
- 5.25 In addition to the powers to undertake protective works the article includes powers to enter any building and land within its curtilage to survey to determine whether protective works are needed and there are powers to enter adjacent land to carry out any protective works.
- 5.26 There is a requirement, before utilising the powers in the article, to serve notice on owners and occupiers with at least 14 days' notice of the said works. In respect of some of the powers included in the article there is an ability for a counter notice to be served by the land owner/occupier within a period of 10 days from the day on which the notice was served.
- 5.27 The article includes compensation provisions both in relation to the consequences of the protective works being undertaken, but also where protective works are undertaken but they are inadequate to protect the building or land from damage (within a period of 5 years from the date that part of the development is first opened for use).
- 5.28 The model provision has been modified to provide that section 13 (refusal to give possession to acquiring authority) of the Compulsory Purchase Act 1965 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.
- 5.29 Article 17 (*Authority to survey and investigate the land onshore*) is a modified model provision which allows the Undertaker to survey and investigate land, including bringing equipment onto the land and making trial holes, bore holes and trenches. The power is subject to a number of conditions including a requirement for 14 days' notice to be given and is subject to the payment of compensation.
- 5.30 The model provision has been modified as follows:
- 5.30.1 sub paragraph 4 provides that no trial holes, bore holes or trenches may be made in land forming part of a railway or land held by or in right of the Crown without the consent of Network Rail or the Crown respectively;
- 5.30.2 Trial holes, bore holes or trenches may not be made in a highway or private street without the consent of the highway or street authority. If a highway or street authority after having received an application to make trial holes, bore holes or trenches within a highway or private street fails to notify the undertaker within 28 days of having received the application it will have been deemed to have provided consent. Similar provisions do not apply in relation to Network Rail or the Crown. This approach has been adopted in the Walney Extension Offshore Wind Farm Order 2014, the Hornsea One Offshore Wind Farm Order 2014, the Hornsea Two Offshore Wind Farm Order 2016 and the East Anglia Three Offshore Wind Farm Order 2017.

5.30.3 Section 13 (*refusal to give possession to acquiring authority*) of the Compulsory Purchase Act 1965 will apply in respect of entry onto, or possession of land under the article.

Part 5 (Powers of Acquisition)

- 5.31 Article 18 (*Compulsory acquisition of land*) provides for the compulsory acquisition of such land as is required for the Authorised Project (or to facilitate the Authorised Project or is incidental to the Authorised Project). Article 21 makes consequential provision for the extinguishment of rights in the land in order to ensure that they cannot impact on implementation or use of the Authorised Project. The article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in article 21 (private rights).
- 5.32 Article 19 (*Compulsory acquisition of land: minerals*) is a model provision which incorporates parts 2 and 3 of Schedule 2 (minerals) of the Acquisition of Land Act 1981 in respect of any mines and minerals under any land which has been compulsorily purchased as part of the Order. It exempts existing rights in minerals from the scope of compulsory acquisition while also providing a procedure for dealing with the situation where the owner of mines and minerals wishes to work them.
- 5.33 Article 20 (*Time limit for exercise of authority to acquire land compulsorily*) is a model provision which imposes a time limit of 7 years for the exercise of powers of compulsory acquisition. There is one departure from the model provision and that is that the time limit has been extended from 5 years to 7 years. This extra time is due to the complexity and scale of the project, and at this stage, unknown contractor and supply chain availability. This change is preceded in the Hornsea Three Offshore Wind Farm Order 2020 and the same issues relating to complexity, scale, contractor and supply chain availability apply to Hornsea Four in the same way as they applied to Hornsea Three.
- 5.34 Article 21 (*Compulsory acquisition of rights etc.*) entitles the undertaker to acquire rights over land and impose restrictive covenants which may be compulsorily acquired, including rights already in existence, or to create new rights.
- 5.35 The article provides that in respect of the Order land specified in Schedule 6 of the Order the undertakers powers of acquisition are limited to the purposes specified in that same schedule. The ability to acquire new rights ensures that the undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) as the Authorised Project is implemented.
- 5.36 Sub paragraphs 5 and 6 provide, where the acquisition of new rights or the imposition of a restriction under the Order is required for a statutory undertaker, the undertaker may, with the consent of the SoS transfer the powers to the statutory undertaker.
- 5.37 Sub-paragraph 8 provides that the special category land (being open space land) is discharged from rights, trusts and incidents so far as those are inconsistent with the exercise of the new rights acquired by the undertaker for the authorised development. Further details on the special category land and the application of section 132(3) of the 2008 Act are set out in the Statement of Reasons.
- 5.38 This article is a departure from the model provisions, but is preceded in the East Anglia Three Offshore Wind Farm Order 2017 and the Cleve Hill Solar Park Order 2020.
- 5.39 Article 22 (*Private rights*) is based on a model provision and has the effect of extinguishing private rights over land where: (1) land is subject to compulsory acquisition under article 18 of the Order; or (2) land is subject to compulsory acquisition of rights or the imposition of restrictive covenants under article 21. The article also suspends private rights for as long as the undertaker is in temporary possession of land under the Order.
- 5.40 Article 23 (*Application of the Compulsory Purchase (Vesting Declarations) Act 1981*) applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of powers of compulsory acquisition pursuant to the Order. It gives the Undertaker the option to acquire land via the process set out under the 1981 Act, rather than the notice to treat procedure. This article

has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016.

- 5.41 Article 24 (*Statutory authority to override easements and other rights*) is intended to provide the Undertaker with certainty that it will not be prevented from carrying out the authorised project because of the existence of an unknown third party right, such as a covenant or easement, which was not revealed through its title investigation and due diligence exercise. The article closely mirrors section 237 of the Town and Country Planning Act 1990, which allows a planning authority to carry out works on land which it has acquired or appropriated for planning purposes, notwithstanding any consequential interference with existing interests in or rights over the land, and accords with section 120(3) and (4) and item 2 of Part 1 of Schedule 5 of the Planning Act 2008, which enable a development consent order to provide for the compulsory suspension, extinguishment or interference with interests in or rights over land.
- 5.42 In sub-paragraph 4 reference is made to section 152 of the 2008 Act to make it clear that compensation is payable and that such compensation would be payable under this section of the 2008 Act rather than the Compulsory Purchase Act 1965.
- 5.43 Article 25 (*Acquisition of subsoil only*) permits the Undertaker to acquire only the subsoil of land which is to be compulsorily acquired (either pursuant to article 18 or 20), and gives the Undertaker the ability to minimise the extent of interests acquired from owners. This article is appropriate in the context of cables or pipes to be laid underground as part of the Authorised Project, where acquisition of the 'entire' freehold may not be required. This is a model provision.
- 5.44 Article 26 (*Modification of Part 1 of the Compulsory Purchase Act 1965*) modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (4) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 23 or 24 of this Order. These modifications have broad precedent in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017 and are reflected in the Wrexham Gas Fired Generating Station Order 2017, the Abergelli Power Gas Fired Generating Station Order 2019, the Hornsea Three Offshore Wind Farm Order 2020 and the Cleve Hill Solar Park Order 2020.
- 5.45 Article 27 (*Rights under or over streets*) is a model provision which allows the Undertaker to enter on and appropriate interests within streets where required for the purpose of the Authorised Project without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances.
- 5.46 Article 28 (*Temporary use of land for carrying out the authorised development*) allows two categories of land to be temporarily used for the carrying out of the Authorised Project. These are:
- 5.46.1 The land specified in Schedule 8 of the Order for the purposes specified in that Schedule;
- 5.46.2 Any other Order land where no notice of entry or general vesting declaration has been served.
- 5.47 In addition to the ability to enter on and take temporary possession of Order land Article 28(1)(b)-(g) stipulate various activities that can be undertaken pursuant to the Article. This list has been modified from the model provision to stipulate project specific activities (e.g. removal of agricultural plant).
- 5.48 Sub-paragraph 8 provides that the Undertaker may not compulsorily acquire any of the land specified in Schedule 6, except that the Undertaker may acquire new rights or impose new restrictive covenants where that land is also specified in Schedule 6 of the Order and it may acquire rights in the subsoil.
- 5.49 There is a limit on the length of time that the Undertaker can use land under this article: being a period of 1 year beginning on the day of completion of that part of the Authorised Project, unless the Undertaker has already served a notice to treat or general vesting declaration.

- 5.50 In addition the article includes several other provisions, including:
- 5.50.1 the Undertaker must provide at least 14 days' notice to the relevant owner/occupiers' before entering the land;
 - 5.50.2 before giving up occupation of land the Undertaker must remove the temporary works and restore the land to the reasonable satisfaction of the owner. The model provision has been modified to specify certain operations that are not required to be removed. This approach is specific to the Authorised Project and is necessitated by the Authorised Project; and
 - 5.50.3 compensation provisions are included to compensate owner/occupiers' affected by their land being temporarily used for carrying out the Authorised Project.
- 5.51 Sub-paragraph 12 provides that the special category land (being open space land) is temporarily discharged from rights, trusts and incidents so far as those are inconsistent with the exercise of the powers under Article 28, and only for the period during which those powers are being exercised.
- 5.52 The article is a departure from the model provisions, but is precedented: see the East Anglia Three Offshore Wind Farm Order 2017, the Millbrook Gas Fired Generating Station Order 2019 and the Hornsea Three Offshore Wind Farm Order 2020.
- 5.53 A similar provision is made in article 29 (*Temporary use of land for maintaining the authorised project*) for the temporary use of land for maintenance of the Authorised Project. The maintenance period in which the power can be exercised is beginning with the date on which a phase of the Authorised Project first exports electricity to the national electricity transmission network. The article is model provision and it allows an Undertaker to take temporary possession of land within the Order limits if it is reasonably required to maintain the Authorised Project and it also allows temporary works and buildings to be constructed if reasonably necessary. The power is limited and cannot be exercised in respect of a house, garden or any other building where it is occupied.
- 5.54 There are several provisions that apply:
- 5.54.1 The Undertaker must provide at least 28 days notice to the relevant owner/occupiers' before taking temporary possession;
 - 5.54.2 The Undertaker may only retain possession for as long as is reasonably necessary to carry out the maintenance;
 - 5.54.3 When returning the land after the temporary possession the Undertaker must remove temporary works and restore the land to the reasonable satisfaction of the owners;
 - 5.54.4 Compensation provisions are included to compensate owner/occupies affected by their land being temporarily used for the maintenance of the Authorised Project.
- 5.55 Sub-paragraph 12 provides that the special category land (being open space land) is temporarily discharged from rights, trusts and incidents so far as those are inconsistent with the exercise of the powers under Article 29, and only for the period during which those powers are being exercised.
- 5.56 Article 30 (*Statutory undertakers*) is based on the model provision subject to some amendments and it provides for the acquisition of land belonging to statutory undertakers that is identified in the Book of Reference (Application Document Ref. E1.3). This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. This article is subject to the protective provisions (see article 44 below) included at Schedule 9 of the Order.
- 5.57 Article 31 (*Recovery of costs of new connections*) provides that persons who have to create a new connection following the exercise of powers under article 30 may recover the costs of new connections from the Undertaker. It is a model provision.

Part 6 (Operations)

- 5.58 Article 32 (*Operation of generating station*) permits the operation and use of the offshore wind turbine generating station comprised in the Authorised Project. Article 32(2) specifically preserves the need for the undertaker to obtain any other operational consent that may be needed, in addition to the Order.
- 5.59 Article 33 (*Deemed marine licences under the 2009 Act*) grants the deemed marine licences included in schedule 11 (*deemed generator assets marine licence*) and schedule 12 (*deemed transmission assets marine licence*). The deemed consent is provided for under 149A of the 2008 Act and under section 65 of the Marine and Coastal Access Act 2009, the successor provision to section 34 of the Coast Protection Act 1949.

Part 7 (Miscellaneous and general)

- 5.60 Article 34 (*Application of landlord and tenant law*) is a model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the Authorised Project or the right to operate the same or any agreement entered into by the Undertaker for the construction, maintenance, use or operation of the Authorised Project.
- 5.61 Article 35 (*Operational land for purposes of the 1990 Act*) is a model provision which has the effect of ensuring that the land on which the Authorised Project is constructed will be "operational land" under section 263 of the 1990 Act.
- 5.62 Article 36 (*Felling or lopping of trees and removal of hedgerows*) provides that the Undertaker may fell or lop or cut back the roots of any tree which is not subject to a tree preservation order or shrub to prevent it obstructing or interfering with the onshore site preparation works, construction, maintenance or operation of the Authorised Project. Compensation is provided for if loss or damage is caused. The article is consistent with the model provision, except the Undertaker has further limited the power so that it does not apply to trees subject to a tree preservation order which are subject to article 37 (*Trees subject to a tree preservation orders*).
- 5.63 Subparagraph (2) of the article is not part of the model provisions, but is preceded in the Hornsea Two Offshore Wind Farm Order 2016, the East Anglia Three Offshore Wind Farm Order 2017 and the Hornsea Project Three Offshore Wind Farm Order 2020.
- 5.64 Article 37 (*Trees subject to tree preservation orders*) provides that the Undertaker may fell or lop or cut back the roots of any tree which is subject to a tree preservation order or shrub to prevent it obstructing or interfering with onshore site preparation works, the construction, maintenance or operation of the Authorised Project. Compensation is provided for if loss or damage is caused.
- 5.65 The article is a model provision save for that the article 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.
- 5.66 Article 38 (*Certification of plans etc*) is based on a model provision which provides for the submission of the various documents referred to in the Order (such as the Book of Reference, plans and ES) to the SoS so that they can be certified as being true copies. A list of the documents to be certified is set out in Schedule 15.
- 5.67 Article 39 (*Arbitration*) is an arbitration provision and it is a departure from the model provision, but is preceded in Hornsea Project Three Offshore Wind Farm Order 2020 and the Cleve Hill Solar Park Order 2020. It is considered that this approach will provide greater certainty to all parties involved in the process and is preferential to the approach adopted in the model provisions.
- 5.68 The article provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. The arbitrator will be appointed by the parties within 14 days of receipt of a notice of arbitration or failing agreement within this time period then by the SoS following application by one of the parties. Arbitration will not apply to consents or approval from the Secretary of State of the Marine Management Organisation.

- 5.69 It applies Schedule 14 of the Order which sets out further detail of the arbitration process. The detail of Schedule 14 is set out below.
- 5.70 Article 40 (*Requirements, appeals etc.*) has the effect of providing that section 78 of the 1990 Act applies to the discharge of requirements included in Schedule 1 of the Order. This means that the Undertaker has a right of appeal to the SoS if an application is made to discharge a requirement and that application is refused or not determined.
- 5.71 Article 41 (*Abatement of works abandoned or decayed*) is intended to make sure that the Undertaker will not abandon or allow to fall into decay Work Nos 1, 2, 3 or 5. It provides a power which enables the SoS, following consultation with the Undertaker, to serve notice on the Undertaker requiring it, at its own expense, to remove or restore those works. Section 105 of the Energy Act 2004 makes provision for the SoS being able to serve notice on the Undertaker requiring it to submit a decommissioning programme for approval. The provisions of this article do not cut across this statutory provision but supplement it.
- 5.72 Article 42 (*Saving provisions for Trinity House*). This is a model provision for harbours and is commonly used in DCOs for offshore wind farm turbine generating stations. It is intended to provide protection to Trinity House.
- 5.73 Article 43 (*Crown rights*) is not a model provision, but it reflects the terms of section 135 of the 2008 Act and is also precedented. It has been used in many made orders, including the East Anglia Three Offshore Wind Farm Order 2017 and Hornsea Three Offshore Wind Farm Order 2020.
- 5.74 The intention of the article is to protect the Crown in respect of its land and interests, both when it holds the land or where it is held by another person (such as a government department). In particular it provides that nothing in the Order authorises the undertaker (or licensee of the undertaker) to interfere with any land or rights in that land as follows:
- 5.74.1 Where it belongs to Her Majesty in right of the Crown and forms part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- 5.74.2 Where it belongs to Her Majesty in right of the Crown, but does not form part of the Crown Estate without the consent in writing of the government department that is managing that land; or
- 5.74.3 Where it belongs to a government department or is held in trust for Her Majesty for the purposes of a government department without the consent of that government department.
- 5.75 Sub-paragraph 2 provides that the prohibition in sub-paragraph 1 of the article does not apply where it is proposed to compulsorily acquire an interest in crown land which is held by a person which is not Her Majesty in right of the Crown or it is not being held on the Crown's behalf provided consent is provided in writing by the appropriate Crown authority.
- 5.76 Article 44 (*Protective provisions*) provides for Schedule 9, which protects the interests of certain statutory undertakers, to have effect.
- 5.77 Article 45 (*Funding*) provides that the Undertaker may not exercise a number of powers prior to it putting into place a guarantee equal to liabilities upon the Undertaker to pay compensation under the relevant provisions (such sum to be approved by the SoS) or an alternative form of security approved by the SoS.
- 5.78 The relevant powers are article 18 (compulsory acquisition of land), article 21 (compulsory acquisition of rights), article 22 (private rights), article 25 (acquisition of subsoil only), article 27 (rights under or over streets), article 28 (temporary use of land for carrying out the authorised project), article 29 (temporary use of land for maintaining the authorised project) and article 30 (statutory undertakers).
- 5.79 The article provides that the funding guarantee or alternative form of security must be in a form which enables a person entitled to compensation to be able enforce the said guarantee or alternative form

of security. The guarantee/alternative form of security is required to be in place for a maximum of 15 years from the date that the relevant power has been exercised.

- 5.80 Article 46 (*Amendment and modification of statutory provisions*) provides for Schedule 13 which modifies and amends the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015, to have effect. These modifications and amendments are explained further in the section on Schedule 13 below. The modifications are made pursuant to the power contained in section 120(5) of the 2008 Act, which permit in certain circumstances the amendment of “statutory provisions”, defined in section 120(6) as including an instrument made under an Act. The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 is such a statutory instrument, and the amendments fall within the circumstances within which amendments are permitted. They are amendments of provisions which relate to matters for which provision may be made in the order or which it is necessary or expedient to make in connection with this Order, being the means by which conflicts between the works and powers contained within the two development consent orders are to be avoided. This article is preceded Article 37 of the Millbrook Gas Fired Generating Station Order 2019 where the Order Limits for the Millbrook Gas Fired Generating Station Order 2019 overlapped with the Order Limits in the Rookery South (Resource Recovery Facility) Order 2011.
- 5.81 Article 47 (*Service of notices*), governs how any notices that may be served under the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the Act only apply to notices served under the Act itself and do not apply to notices served under the Order. This article is preceded in, for example, the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 and the Lake Lothing (Lowestoft) Third Crossing Order 2020.
- 5.82 Article 48 (*Modification of Section 106 agreements relating to land*) disapplies the requirements of certain agreements made under section 106 of the Town and Country Planning Act 1990 in relation to the Undertaker. These agreements relate to the current use of the land (such as an onshore windfarm) which will not be affected by Hornsea Four. However, the drafting of these agreements means that the planning obligations would be automatically binding on the Applicant as a person with an interest in the land by virtue of the property rights required for Work No. 6. Article 48 ensures that these planning obligations, which are not applicable to Hornsea Four, do not apply to the undertaker.

6. SCHEDULES

- 6.1 Schedule 1 describes the Authorised Project in detail, split into 'work numbers', each of which represents different elements of the Authorised Project. This split of the Authorised Project between different work numbers enables the Order to refer to different parts of the Authorised Project by citing the relevant work number.
- 6.2 The works set out in Schedule 1 to the Order are explained in paragraphs 2.10 to 2.14 above.
- Schedule 1 – Part 3 (requirements)**
- 6.3 This part of Schedule 1 sets out the requirements which apply to the carrying out of and operation of the Authorised Project under the Order.
- 6.4 The requirements closely relate to the mitigation set out in the ES (Application Document Ref. A) and a number of them specifically refer to the ES in order to ensure that the mitigation or other measures outlined in those documents are secured.
- 6.5 Many of the requirements require submission of details for approval to the Relevant Planning Authorities. Those requirements are drafted with a view to enabling the Undertaker to obtain approval for part of the Authorised Project and not require it to discharge the requirement for the whole of the Authorised Project where this approach has been taken. This approach permits an appropriately flexible approach to the discharge of requirements by the Undertaker. This provides an appropriate balance between development not starting until details are approved and allowing other parts of the Authorised Project (where details are already approved) to be constructed.

- 6.6 Many of the requirements provide for a document (such as details, a method statement, a plan, a programme or scheme) specifying how the undertaker will construct, operate or maintain the Authorised Project to be submitted for approval to the Relevant Planning Authority. The model provisions have been adapted throughout to provide that it is for the Relevant Planning Authority to approve the relevant document (rather than, as in the model provisions, the Infrastructure Planning Commission).
- 6.7 A further departure from the model provisions is in relation to the duty to consult with a third party about a document submitted to the planning authority for approval. Where consultation is required under the draft Order it is, in each case, the Relevant Planning Authority's duty to carry it out before approving a document submitted to it (rather than, as in some of the model provisions, the undertaker's duty to carry it out before submitting the document for approval). Where it is considered that it would be particularly relevant for the Relevant Planning Authority to consult a third party, that third party has been named within the relevant requirement. For example this has been done in requirement 10 which requires the relevant statutory nature conservation body (SNCB) to be consulted in respect of the discharge of the Ecological Management Plan.
- 6.8 In all cases where a scheme or plan is to be submitted for approval to an approving authority there is a requirement for the Undertaker to implement the approved scheme or plan.
- 6.8.1 *Requirement 1: Time limits* - This requirement is based upon the model provisions but substitutes a requirement to commence the Authorised Project within 5 years to 7 years of the date of the Order coming into force. The justification for the extension of the time period to exercise compulsory purchase powers is included at paragraph 5.32. The same justification applies to the departure to the model requirement here. This condition is precedented in Hornsea Project Three Offshore Wind Farm Order 2020.
- 6.8.2 *Requirements 2 to 5: Detailed offshore design parameters* - These requirements set out the detailed design parameters within which the Authorised Project must be constructed. The relevant design parameters are shown in the table included at Appendix 1. In summary the design parameters are as follows:
- (a) Requirement 2 sets out the maximum design parameters for the wind turbine generators;
 - (b) Requirement 3 sets out the maximum design parameters for the offshore electrical installations and offshore accommodation platforms;
 - (c) Requirement 4 sets out the maximum scour protection for wind turbine generators, offshore accommodation platforms and offshore electrical installations;
 - (d) Requirement 5 stipulates that the maximum number of cables systems must not exceed 6 and is stipulates the maximum length of the cables compromised in work 1(c), 2(d), and 2(e). Further it sets out that the total number of cable protection will not exceed 2,042,000 cubic meters with a maximum footprint of 2,058,000 square metres.
- 6.8.3 *Requirement 6: Biodiversity net gain* – The requirement stipulates that the works for Work No.7 may not be commenced until a net gain strategy has been submitted and approved. Once approved the scheme must be implemented as approved.
- 6.8.4 *Requirement 7: Detailed design approval onshore* – This requirement provides that the Undertaker must obtain approval from the Relevant Planning Authority for the details of:
- (a) the layout;
 - (b) scale;
 - (c) proposed finished ground levels;

- (d) external appearance and materials;
- (e) hard surfacing materials;
- (f) vehicular and pedestrian access and circulation areas;
- (g) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (h) proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports; and
- (i) means to control operational noise from Work No.7 to a level no greater than 5dB above representative background (LA90,T) at the nearest identified noise sensitive receptors.

prior to the commencement of the connection works in Work No.7. The details submitted must be in accordance with the parameters set out in the limits of deviation set out in the onshore limits of deviation plan.

- 6.8.5 Requirements 8 and 9: *Provision of landscaping and implementation and maintenance of landscaping* – The Undertaker is required, before it commences the connection works, to submit a written landscape plan and associated works programme which accords with the outline landscape plan and outline ecological management plan for approval to the Relevant Planning Authority in consultation with the relevant SNCBs and the Historic Buildings and Monuments Commission for England. The requirement stipulates what matters must be included in the landscape plan. All landscaping works are required to be carried out in accordance with the approved documents and the relevant recommendations of appropriate British Standard. If any tree or shrub which is planted is, within the period of five years following planting, removed by the undertaker, dies or becomes damaged or diseased then it must be replaced in the first available planting season with a specimen of the same species and size.
- 6.8.6 Requirement 10: *Ecological management plan* – An ecological management plan, which is in accordance with the outline ecological management plan, is required to be approved for each stage of the connection works prior to that stage commencing. The ecological management plan is to be approved by the Relevant Planning Authority, but also in consultation with the relevant SNCB and the Environment Agency. The onshore site preparation works may not commence until a written ecological management plan for those works, in accordance with the outline ecological management plan, has been approved by the relevant planning authority in consultation with the relevant SNCBs and where relevant the Environment Agency.
- 6.8.7 Requirement 11: *Highway accesses* – Construction of any permanent or temporary means of access, or use of an existing access, shall not be commenced by the Undertaker until it has obtained the written approval of an access plan for that access, including for the siting, design, layout and any access management measures for any new, permanent or temporary means of access to a highway to be used by vehicular traffic or any alteration to an existing means of access to a highway to be used by vehicular traffic, for each stage of the connection works prior to that stage commencing. The approving authority is East Riding of Yorkshire Council as the local highway authority.
- 6.8.8 Requirement 12: *Fencing and other means of enclosure* – The Undertaker is required to obtain the written approval from the Relevant Planning Authority for any proposed permanent fences, walls or other means of enclosure for each stage of the connection works prior to that stage commencing. All temporary fences, walls or other means of enclosure must be provided, for that stage, in accordance with the outline code of construction practice. Construction sites must remain securely fenced in accordance with the code of construction practice and any temporary fencing must be removed once the

connection works are complete. Where any permanent fencing relates to an the onshore HVDC/HVAC substation then that fencing must be erected before they are brought into use and it must then be maintained throughout the lifetime of that piece of infrastructure.

- 6.8.9 Requirement 13: *Surface and foul water drainage* – There is a requirement for the Undertaker to obtain the written approval of the lead local flood authority in respect of surface water treatment and where relevant foul water drainage system (including means of pollution control), for each stage of the connection works prior to that stage commencing. The lead local flood authority will need to consult with the sewage and drainage authorities as well as the Environment Agency before providing approval.
- 6.8.10 Requirement 14: *Contaminated land and groundwater scheme* - No stage of the authorised development may be commenced until a scheme dealing with any contamination of land, to include groundwater, which is likely to cause significant harm to persons or controlled waters or the environment has been submitted to and approved by the Relevant Planning Authority in consultation with the Environment Agency and to the extent that the plan relates to the intertidal area, the MMO. The scheme to be submitted to discharge this requirement must include an investigation and assessment report, prepared by a specialist consultant, approved by the Relevant Planning Authority, to identify the extent of contamination and necessary remedial measures, together with a management plan which sets out long term measures with respect to any contaminants remaining on the site.
- 6.8.11 Requirement 15: *Surface water* – Construction works (or part thereof) relating to Work No.7 shall not commence until a detailed surface water scheme in accordance with the outline code of construction practice and based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the onshore HVDC/HVAC substation has been submitted to and approved by relevant sewerage and drainage authorities, in consultation with the Environment Agency.
- 6.8.12 Requirement 16: *Onshore Archaeology* – The Undertaker must submit to the Relevant Planning Authority a written scheme of archaeological investigation for approval, for each stage of the connection works, before that stage commences. Thereafter the scheme must be undertaken in accordance with the approved details.
- 6.8.13 Requirement 17: *Code of construction practice* - The Undertaker must submit to the Relevant Planning Authority (in consultation with the Environment Agency, the relevant SNCBs, and, if applicable, the MMO) a code of construction practice for approval, for each stage of any works landward of MLWS, Work No. 2(f) or Work No. 5, before that phase commences. The details submitted must accord with the outline code of construction practice. Thereafter the construction works must be undertaken in accordance with the approved code.
- 6.8.14 Requirement 18: *Construction traffic management plan* - The Undertaker must submit to the Relevant Planning Authority a construction traffic management plan for approval, for each stage of the connection works, before that stage commences. The Relevant Planning Authority is required to consult the relevant highway authority before approving the construction traffic management plan. Thereafter the construction traffic management plan must be implemented as approved.
- 6.8.15 Requirement 19: *European protected species onshore* – Prior to any stage of the connection works commencing a final pre-construction survey must be undertaken to establish whether any European protected species are present on the affected land or in any of the trees to be lopped or felled. If the pre-construction surveys identify any European protected species then the relevant part of the connection works cannot commence until the Relevant Planning Authority has approved a scheme of protection and mitigation measures or a European protected species licence has been granted. The scheme may only be approved by the Relevant Planning Authority in consultation with the relevant SNCBs.

- 6.8.16 Requirement 20: *Restoration of land used temporarily for construction* – Land will be used onshore during the construction period but which will not be incorporated into the permanent works or approved landscaping. In respect of this land it must be reinstated in accordance with details to be approved by the Relevant Planning Authority (in consultation with the relevant highways authority and where appropriate the MMO). Such reinstatement works should be completed as soon as reasonably practicable but at the latest within 12 months of completion of the works.
- 6.8.17 Requirement 21: *Control of noise during operational phase* – Prior to commencement of activities in relation to Work No.7, a noise management plan ("NMP") relating to Work No. 7 must be submitted by the Undertaker to the Relevant Planning Authority for approval. The NMP must detail appropriate noise attenuation and mitigation measures necessary to attenuate noise from Work No. 7, including any relevant noise limits and a scheme for monitoring the effectiveness of the measures identified in the NMP. The NMP must be implemented as approved.
- 6.8.18 Requirement 22: *Enhancement strategy* – An enhancement strategy must be prepared in relation to each stage of the authorised development and submitted to the relevant planning authority for approval prior to commencement of that stage. The enhancement strategy must be implemented as approved.
- 6.8.19 Requirement 23 *Ministry of Defence radar mitigation* – This requirement 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) Staxton Wold and the Ministry of Defence's air surveillance and control operations.
- 6.8.20 Requirement 24: *Onshore decommissioning* – Within three months of the connection works no longer being in commercial operation there is a requirement for the Undertaker to submit an onshore decommissioning plan to the Relevant Planning Authority for approval. The undertaker must implement the decommissioning plan as approved unless otherwise approved by the relevant planning authority.
- 6.8.21 Requirement 25: *Employment and skills plan* – Prior to commencement of any stage of the connection works, an employment and skills plan must be prepared and submitted to the relevant planning authority for approval prior to commencement of that stage. The approved employment and skills plan must be implemented as approved.
- 6.8.22 Requirement 26: *Energy balancing infrastructure safety management* – This requirement provides for an energy balancing infrastructure HazID report to be approved before Work No. 7(b) is commenced. The approved energy balancing infrastructure HazID report must be implemented as approved.
- 6.8.23 Requirement 27: *Stages of authorised development* – This requires a scheme setting out the stages of construction of the development to be submitted to and approved by the relevant planning authority in relation to the connection works and the MMO in relation to works seaward of MHWS. This relates to stages of completion of construction only and the overall project must be constructed in one phase.
- 6.8.24 Requirement 28: *Claxby radar mitigation* – provides for a mitigation scheme to prevent interference by the authorised development with the NATS surveillance radar at Claxby.
- 6.8.25 Requirement 29: *Requirement for written approval* – This requirement confirms where the approval of a party is required that it must be in writing.
- 6.8.26 Requirement 30: *Amendments to approved details* – This requirement allows details which have been submitted and approved by the Relevant Planning Authority (or another person) to be amended/varied in writing by the Relevant Planning Authority. The amendment or variation must always be in accordance with the principles and assessment undertaken in

the environmental statement and must not give rise to any materially new or different environmental effects from those assessed in the original environmental statement.

Schedule 1 – Part 4 (Procedure for discharge of requirements)

- 6.9 This part provides a clear procedure for the discharge of requirements by the relevant body that is discharging a requirement. It sets out clear time limits for decisions to be made and makes provision for circumstances where the discharging body requires further information to be provided in relation to an application for the discharge of a requirement. It is also made clear that any steps the Undertaker takes to comply with the requirements before the Order is made will be treated as effective in complying with the requirements once the Order is made, thereby avoiding the need to repeat such steps.
- 6.10 Part 4 of Schedule 1 also includes an appeals process in respect of discharge, broadly in line with a number of DCOs made to date, including the Hinkley Point C (Nuclear Generating Station) Order 2013 and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. The process also applies in the circumstances where a notice under s.60 or 61 of the Control of Pollution Act 1974 is issued. This reflects provisions in Schedule 17 to the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and streamlines the appeals process, thus minimising the risk to timely delivery of the Scheme.
- 6.11 Schedule 2 (*Streets subject to street works*) sets out the streets that would be subject to street works (including reference to the location and the specific street).
- 6.12 Schedule 3 (*Streets to be temporarily stopped up*) sets out the streets to be temporarily stopped up, and public rights of way to be temporarily diverted. It references the street and the extent of the street that may be stopped up.
- 6.13 Schedule 4 (*Public rights of way to be temporarily stopped up or diverted and access land*) sets out the public rights of way to be temporarily stopped up or permanently or temporarily diverted and access land where public rights of way are to be temporarily suspended. It references the public right of way and the extent of the public right of way that may be stopped up or diverted.
- 6.14 Schedule 5 (*Access to works*) sets out those accesses that will be created to carry out the Authorised Project.
- 6.15 Schedule 6 (*Land in which only new rights etc. may be acquired*) specifies both the areas of land in which only new rights may be acquired by the Undertaker and the nature of the rights that may be acquired.
- 6.16 Schedule 7 (*Modification of compensation and compulsory purchase enactments for creation of new rights*) modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. This has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016.
- 6.17 Schedule 8 (*Land of which temporary possession may be taken*) sets out the land of which only temporary possession may be taken, pursuant to article 28.
- 6.18 Schedule 9 (*Protective provisions*) sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the Authorised Project. The undertaker has engaged with relevant statutory undertakers and will continue to do so following submission of the Application with a view to agreeing bespoke protective provisions for inclusion in the Order (or where appropriate to agreeing terms for such provisions outside the Order itself). The current status of negotiations is set out in Appendix C of the Statement of Reasons.
- 6.19 Part 7 of Schedule 9 includes protective provisions for the benefit of the undertaker in the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 to address the overlapping order limits and ensure that both projects can co-exist. The Applicant has engaged with Dogger Bank and will continue to do so following submission of the Application with a view to agreeing the protective provisions for inclusion in the Order.

- 6.20 Protective provisions are included in Part 8 of Schedule 9 for the protection of the licensee of UK Carbon Dioxide Appraisal and Storage Licence CS001 (BP Exploration Operating Company Limited) whose licence area overlaps with the Authorised Project. Negotiations are ongoing with this licensee in relation to a coexistence and cooperation agreement and as such these protective provisions are included in the draft DCO on a without prejudice basis pending the conclusion of these discussions.
- 6.21 Schedule 10 (*Hedgerows*) sets out the hedgerows that may be removed pursuant to article 36.
- 6.22 Schedules 11 and 12 (*Deemed Marine Licence*) sets out the marine licences referred to in article 33, which would be deemed to be granted for works comprised in the Authorised Project.
- 6.23 Schedule 11 includes the Deemed Marine Licence for Generation assets. The model provisions do not include a draft marine licence, but a standard structure has been developed by previous applications for development consent for offshore wind farms. The Applicant has adopted a similar approach for the Authorised Project.

Part 1 – Licenced activities

- 6.24 Paragraph 1 (*Interpretation*) – provides the definition and interpretation of key terms used in the licence. Many of the terms included in this paragraph are identical to the terms in Article 2 of the Order.
- 6.25 Paragraphs 2 to 4 (*Details of licenced marine activities*) - provides details of the licensable marine activities as they relate to the generation assets, both in terms of construction as well as operation. It replicates the description of the Authorised Development in Schedule 1 of the Order and it also describes the substances that may be disposed of as part of construction of the Authorised Development.
- 6.26 Paragraph 5 sets out the grid co-ordinates for the Authorised Development comprising Work No.1.
- 6.27 Paragraph 6 confirms that the deemed marine licence remains in force until the Authorised Project has been decommissioned.
- 6.28 Paragraph 7 confirms that the provisions of section 72(7) of the 2009 Act do not apply to any transfer of the deemed marine licence unless it is a transfer not falling within Article 5 of the Order. This is necessary to ensure that there is no conflict between the operation of Article 5 of the Order and Section 72(7) of the 2009 Act.
- 6.29 Paragraph 8 confirms that where any licenced activity is to be undertaken in accordance with a plan, protocol or statement approved under the licence, the approved details will include any amendments approved by the MMO.
- 6.30 Paragraph 9 confirms that any amendments made to any approved details must be in accordance with the principles and assessments set out in the Environmental Statement.

Part 2 – Conditions

- 6.31 Conditions 1 to 3 (*Design parameters*) repeat the design parameters included in Schedule 1, Part 3 of this Order.
- 6.32 Condition 4 (*Maintenance of the authorised development*) – confirms that the Undertaker may maintain the Authorised Development except where the terms of the licence provides otherwise. All maintenance works must have been assessed in the Environmental Statement.
- 6.33 Condition 5 (*Vessels under the undertaker's control*) – provides for a code of conduct to be issued to vessels under its control which are operating within the Order Limits which shall ensure co-ordination to avoid collision risk.
- 6.34 Condition 6 (*Extension of time periods*) – confirms that any time period for either the MMO or the Undertaker may be extended with the agreement of the other party.

- 6.35 Condition 7 (*Notifications and inspections*) – provides for a procedure of supplying copies of the licence to agents, contractors, restricting the use of contractors and vessels notified to the MMO and publicising commencement of the licenced activities.
- 6.36 Condition 8 (*Aids to Navigation*) – provides for various matters in respect of aids to navigation including the requirement to maintain navigation aids and a procedure to be followed where an aid to navigation fails. There is also a requirement to provide notice to mariners and notification of the progress of works to Trinity House.
- 6.37 Condition 9 (*Colouring of structures*) – sets the colour of structures from highest astronomical tide to a height to be directed by Trinity House and the colour for the rest of the structure.
- 6.38 Condition 10 (*Aviation safety*) – requires the Undertaker to notify the Defence Infrastructure Organisation Safeguarding regarding the construction and dimensions of the Authorised Development.
- 6.39 Condition 11 (*Chemicals, drilling and debris*) - sets standards that must be met by the Undertaker in respect of the chemicals and other substances that can be used and how they can be stored, transported and where they can be disposed of. There are also provisions relating to chemicals and other substances that cannot be disposed of and a procedure to be followed should objects be dropped unintentionally.
- 6.40 Condition 12 (*Force majeure*) – provides for deposits during an emergency situation and the requirement for the Undertaker, at its own cost, to recover that deposit.
- 6.41 Condition 13 and 14 (*Pre-construction plans and documentation*) – provides a requirement for the Undertaker to obtain the approval, before the commencement of licenced activities, of a range of documentation. The documentation includes a design plan, construction programme, construction method statement, construction project environment management and monitoring plan, scour protection management plan, pre-construction monitoring surveys, piling marine mammal mitigation protocol, cable specification and installation plan, offshore operations and maintenance plan, an aid to navigation management plan, a cable specification and installation plan and proposals for ornithological monitoring. Paragraph (2) includes a requirement to submit a written scheme of archaeological investigation, paragraph (3) requires works involving intrusive seabed works to have a specific outline written scheme of investigation. Paragraph (4) states that where driven or part driven pile foundations are used the hammer energy must not exceed 5,000kJ. Paragraph (5) sets out that no more than two vessels may be engaged at any time in piling, and (6) states that no more than two piles may be piled simultaneously with this licence and the one granted under Schedule 12.
- 6.42 Condition 14 stipulates time scales for the submission of the relevant programmes, plans, protocols or schemes and the time period in which they should be determined by the MMO.
- 6.43 Condition 15 (*Offshore safety management*) requires the submission of an Emergency Response Co-operation Plan by the undertaker and provides that no part of the authorised scheme can commence until it has been approved.
- 6.44 Condition 16 (*Reporting of engaged agents, contractors and vessels*) requires the Undertaker to provide the MMO details of agents and contractors engaged in licenced activities.
- 6.45 Condition 17 (*Pre-construction monitoring and surveys*) – requires the Undertaker to submit a monitoring plan or plans in accordance with the outline marine monitoring plan for approval by the MMO. The condition sets out what must be included within the monitoring plan. Paragraph (2) provides details of surveys required for the pre-construction phase, including a high-resolution swath bathymetric survey, biogenic or biogenic reef features survey, navigation risk assessments, archaeological exclusion zone identification and ornithological monitoring.
- 6.46 Condition 18 (*Construction monitoring*) – requires the Undertaker to submit a construction monitoring plan or plans in accordance with the in-principle monitoring plan for approval by the MMO. The monitoring plan or plans must include details of construction monitoring, including piling noise monitoring for the first four piles and vessel traffic monitoring.

- 6.47 Condition 19 (*Post-construction monitoring*) – requires the Undertaker to submit a post-construction monitoring plan or plans in accordance with the outline marine monitoring plan for approval by the MMO. The monitoring plan or plan must include surveys for the extent of biogenic or geogenic reef, bathymetric survey and ornithological monitoring.
- 6.48 Condition 20 (*Timing of monitoring report*) – provides that monitoring reports under conditions 17, 18 and 19 must be provided to the MMO no later than four months after completion of the relevant monitoring.
- 6.49 Condition 21 (*Reporting of impact pile driving*) – places reporting obligations on the Undertaker with the Marine Noise Registry in the event of driven or part driven foundations are employed, or explosives proposed to be used.
- 6.50 Condition 22 (*Maintenance reporting*) – requires an annual maintenance report to be submitted to the MMO with a record of licenced activities for the preceding year, and a review in a consolidated report every five years.
- 6.51 Condition 23 (*Stages of construction*) – requires a written scheme outlining the stages of construction of the authorised development to be approved by the MMO.
- 6.52 Condition 24 (*Completion of construction*) – requires the Undertaker to submit a report to the MMO on the completion of construction setting out the number of turbines and the as built plans for the authorised development.
- 6.53 Schedule 12 includes the deemed marine licence for transmission assets. It largely duplicates the provisions of the deemed marine licence for the generation assets in Schedule 11 of the Order.
- 6.54 Schedule 13 (*Modifications to and amendments of the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015*) comprises an amendment to Schedule 12 of the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 to include a new Part 6 which contains protective provisions to govern the interaction between the authorised development and the development authorised by the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015. Due to the location of the connections into Creyke Beck substation, it is not anticipated that there will be any physical interaction between the two projects. However, the Order Limits for Hornsea Four will overlap with the Order Limits in the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 and certain statutory powers (such as street works powers) will apply to the same land under both the Order and the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015.
- 6.55 As a matter of law it is possible for a DCO to include a provision that changes, or changes the effect of, certain other legislation. Section 120(5) PA 2008 provides that a DCO may:
- (a) *“apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order; [and]*
 - (b) *make such amendments, repeals or revocations of statutory provisions of local application as appear to the Secretary of State to be necessary or expedient in consequence of a provision of the order or in connection with the order...”*
- 6.56 The term ‘statutory provision’ is wide enough to relate to the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 as that term is defined in section 120(6) as being “a provision of an Act or of an instrument made under an Act” (emphasis added). The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 is itself a statutory instrument made under an Act (the 2008 Act) and its provisions (i.e. its articles and schedules) are, therefore, ‘statutory provisions’ for the purposes of section 120(5)(a) and section 120(5)(b).
- 6.57 The meaning of the words ‘modify’ is wide and encompass both ‘textual amendments’ and ‘nontextual modifications’ (see paragraph 6.9 of the Office of Parliamentary Counsel Drafting Guidance (June 2020)). This approach is precedented in Schedule 11 of the Millbrook Gas Fired Generating Station Order 2019 which modifies and amends the Rookery South (Resource Recovery Facility) Order 2011.

- 6.58 In the same way that the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 contains protective provisions for the benefit of other statutory undertakers, the Applicant proposes to modify the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 to protect the Applicant (who is also a statutory undertaker as the holder of a generation licence under the Electricity Act 1989).
- 6.59 The effect of Schedule 13 is to insert a new Part 6 into Schedule 12 to the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 for the protection of the Applicant. Schedule 13 does not amend any of the articles in the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015. The newly inserted protective provisions in Part 6 of Schedule 12 to the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 do, however, modify the effect of the substantive provisions in the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 and do so for the protection of Applicant.
- 6.60 The 'textual amendment' of inserting a new Part 6 into Schedule 12 to the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 makes a number of 'non textual modifications' to the effect of the articles in the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015. This falls within the concept of 'modification' as explained in the Office of Parliamentary Counsel Drafting Guidance (June 2020) and is therefore permitted pursuant to section 120(5)(a) of the PA 2008.
- 6.61 However, if the Secretary of State considers it more appropriate, the insertion of a new Part 6 into Schedule 12 to the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 can be promoted as an 'amendment' to the 'statutory provisions' in the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 under section 120(5)(b) of the PA 2008. The articles and schedules in the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 are statutory provisions 'of local application' as its powers are limited to a defined area.
- 6.62 In order to utilise section 120(5)(b), the Secretary of State must be satisfied that the amendment is necessary or expedient. The Applicant considers the proposed amendments to be necessary and expedient to ensure that the authorised development can be constructed, operated and maintained without impediment.
- 6.63 Schedule 14 (*Arbitration rules*) – This schedule sets out the process for arbitration as referred to in Article 39.
- 6.64 This schedule 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:
- 6.64.1 Within 15 working 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.
- 6.64.2 Within 15 working 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.
- 6.64.3 Within 5 working days of receipt of the Respondent's documentation the Claimant may make a Statement of Reply.
- 6.65 The costs of the arbitration will be awarded by the arbitrator and the principle that each party will bear its own costs unless either party behaved unreasonably. Costs will include the arbitrator's costs together with the reasonable legal fees and other costs incurred by the other party.
- 6.66 Schedule 15 (*Documents to be certified*) – This schedule is referred to in Article 38 and provides a list of the documents to be certified by the Secretary of State as true copies.

APPENDIX 1 Design parameters

Component	Specification	Parameter	DCO reference
Wind turbine generators (WTG)	Maximum number of WTG	180	Work No 1(a) Requirement 2 DML (generation assets), Part 1 Paragraph 3, Part 2, Condition 1.
	Maximum tip height from LAT	370 metres.	Requirement 2 DML (generation assets), Part 2 Condition 1
	Maximum rotor diameter	305 metres.	Requirement 2 DML (generation assets), Part 2 Condition 1
	Minimum spacing between WTG	810 metres in all directions	Requirement 2 DML (generation assets), Part 2 Condition 1
	Maximum spacing from LAT to the lowest point of the rotating blade	42.43 metres	Requirement 2 DML (generation assets), Part 2 Condition 1
	Foundation types	Monopile foundation Mono suction bucket foundation Gravity base foundation Jacket foundation As defined in the Order	Requirement 2 DML (generation assets), Part 2 Condition 1
	Maximum pin pile diameter where jacket foundation employed	Maximum of diameter of 4 metres	Requirement 2 DML (generation assets), Part 2 Condition 1
	Maximum pin pile diameter where monopile foundation employed	Maximum of diameter of 15 metres	Requirement 2 DML (generation assets), Part 2 Condition 1
	Total seabed footprint for WTG	Maximum 330,645 square metres excluding scour protection and 1,056,471 square metres including scour protection	Requirement 2 DML (generation assets), Part 2 Condition 1
	Total scour protection material for WTG foundations	Maximum of 1,602,841 cubic metres	Requirement 2 DML (generation assets), Part 2 Condition 1
Maximum number of gravity base structures	110	Requirement 3 DML (generation assets), Part 2 Condition 1	
Offshore electrical installations and offshore accommodation platforms	Total number	10 which shall consist of a combination of no more than:	Requirement 3

		<ul style="list-style-type: none"> (a) six small offshore transformer substations; (b) three large offshore transformer substations; (c) three offshore HVAC booster stations; (d) six small offshore HVDC converter stations; (e) three large offshore HVDC converter stations; and (f) one offshore accommodation platform. 	DML (generation assets), Part 2 Condition 1 DML (transmission assets), Part 2 Condition 1
	Maximum pin pile diameter where jacket foundation employed	Maximum of diameter of 4 metres	Requirement 3 DML (generation assets), Part 2 Condition 1 DML (transmission assets), Part 2 Condition 2
	Maximum pin pile diameter where monopile foundation employed	Maximum of diameter of 15 metres	Requirement 3 DML (generation assets), Part 2 Condition 1 DML (transmission assets), Part 2 Condition 2
Small offshore transformer substation	Maximum dimensions	100 metres in height from LAT; 90 metres in length; and 90 metres in width.	Requirement 3 DML (transmission assets), Part 2 Condition 1
	Foundation type	Monopile foundation Mono suction bucket foundation Gravity base foundation Box type gravity base Jacket foundation As defined in the Order	Requirement 2 DML (transmission assets), Part 2 Condition 2
Large offshore transformer substation	Maximum dimensions	100 metres in height from LAT; 180 metres in length; and 90 metres in width.	Requirement 3 DML (transmission assets), Part 2 Condition 2
	Foundation type	Monopile foundation Mono suction bucket foundation Jacket foundation Gravity base foundation	Requirement 2 DML (transmission assets), Part 2 Condition 2

		Box type gravity base structure Pontoon gravity base 1 structure Pontoon gravity base 2 structure As defined in the Order	
Offshore HVAC booster station	Maximum dimensions	100 metres in height from LAT; 90 metres in length; and 90 metres in width.	Requirement 3 DML (transmission assets), Part 2 Condition 1
	Foundation type	Monopile foundation Mono suction bucket foundation Jacket foundation Gravity base foundation Box type gravity base As defined in the Order	Requirement 2 DML (transmission assets), Part 2 Condition 1
Small offshore HVDC converter station	Maximum dimensions	90 metres in height from LAT; 90 metres in length; and 100 metres in width.	Requirement 3 DML (transmission assets), Part 2 Condition 1
	Foundation type	Monopile foundation Mono suction bucket foundation Jacket foundation Gravity base foundation Box type gravity base structure Pontoon gravity base 1 structure Pontoon gravity base 2 structure As defined in the Order	Requirement 2 DML (transmission assets), Part 2 Condition 1
Large offshore HVDC converter station	Maximum dimensions	100 metres in height from LAT; 180 metres in length; and 90 metres in width.	Requirement 3 DML (transmission assets), Part 2 Condition 1
	Foundation type	Monopile foundation Mono suction bucket foundation Jacket foundation Gravity base foundation Box type gravity base structure Pontoon gravity base 1 structure Pontoon gravity base 2 structure As defined in the Order	Requirement 2 DML (transmission assets), Part 2 Condition 1
Offshore accommodation platform	Maximum dimensions	64 metres in height from LAT; 60 metres in length; and 60 metres in width.	Requirement 3 DML (generation assets), Part 2 Condition 2
	Foundation type	Monopile foundation Mono suction bucket foundation Jacket foundation	Requirement 2 DML (generation assets), Part 2 Condition 2

		Gravity base foundation Box-type gravity base structure As defined in the Order	
	Total seabed footprint	Maximum 5,625 square metres excluding scour protection and 30,625 square metres including scour protection	Requirement 3 DML (generation assets), Part 2 Condition 2
Offshore substation foundation	Total seabed footprint	Maximum 101,250 square metres excluding scour protection and 371,250 square metres including scour protection	Requirement 3 DML (transmission assets), Part 2 Condition 1
Cables systems	Maximum number	6	Requirement 5
	Maximum length of cable comprising Work No.1(c)	600km	Requirement 5
	Maximum length of cable comprising Work No 2(d)	90 km	Requirement 5
	Maximum length of cable comprising Work No 2(e)	654 km	Requirement 5
	Maximum volume of cable protection	2,042,000 cubic metres	Requirement 5
	Maximum footprint of cable protection	2,058,000 square metres	Requirement 5
	Total volume of scour protection	2,241,221 cubic metres	Requirement 4

