

Hornsea Project Four Offshore Wind Farm

EN010098

Examining Authority's (ExA)

Consultation Draft Development Consent Order (DCO)

**Schedule of ExA's recommended amendments to the Applicant's draft DCO
submitted at Deadline (D) 5a [REP5a-002]**

The following table sets out the Examining Authority's (ExA) recommended amendments to the Applicant's draft Development Consent Order (DCO) that was submitted at Deadline (D) 5a [REP5a-002].

Regardless of the ExA's recommendation to the Secretary of State a recommended DCO will need to accompany the recommendation report. As a result, the production of this document is done on a without prejudice basis and should not be taken as an indication of the ExA's final recommendation.

The purpose of this document is only to highlight potential changes to the draft DCO that have not already been submitted into the Examination or discussed at an Issue Specific Hearing (ISH).

Recommended amendments are set out in the same order that they appear in the DCO as currently drafted. Column 2 of the table indicates the current drafting as suggested by the Applicant; column 3 provides the ExA's preferred drafting with the recommended changes to the current drafting shown in bold. An explanation for the recommended change is provided in column 4.

Due to publication deadlines, the ExA's recommended amendments have had to be drafted prior to D6 when the Exam Timetable indicates that an updated version of the draft DCO and a schedule of changes to the draft DCO should be submitted to reflect any changes that may have resulted from the ISH [EV-031 to EV-036]. However, as D6 was one day prior to the publication of this document it was agreed at ISH7 on the draft DCO that for efficiency the Applicant would not submit an updated version of the draft DCO at D6. Instead, it was agreed with the Applicant that any changes that had resulted from the ISH would be incorporated along with any changes that would result from the ExA's recommended amendments to the Applicant's draft DCO into the version of the draft DCO due to be submitted at D7. As a consequence, the recommended amendments set out in the table do not refer to those changes/ additions that were discussed at ISH7.

Responses to this document are due at **Deadline 7, Wednesday 10 August 2022.**

Reference	Text as set out in the draft DCO [REP5a-002]	ExA's Recommended Amendment	Reason and Notes
ARTICLES			
Article 2	"the Driffield Navigation Trust" means the Driffield Navigation Trust of 5 New Walk Close, Driffield, East Yorkshire, England, YO25 5LG (Company No. 01468822)	"the Driffield Navigation Trust" means the Driffield Navigation Trust of 5 New Walk Close, Driffield, East Yorkshire, England, YO25 5LG (Company No. 01468822);	Typo – missing semi-colon
Article 2	"deemed marine licences" means the marine licences as set out in Schedules 11 and 12;	"deemed marine licences" means the marine licences as set out in Schedules 11 (deemed marine licence under the 2009 Act – generation assets) and 12 (deemed marine licence under the 2009 Act – offshore transmission assets);	For clarity and precision
Article 2	n/a	Historic England means the Historic Buildings and Monuments Commission for England	Historic England is referred to in Requirements but is currently not defined.
Article 2	"horizontal directional drilling" refers to a boring technique involving drilling in an arc between two points;	"horizontal directional drilling" refers to a trenchless boring technique for installing cables and cable ducts involving drilling in an arc between two points;	For clarity and precision
Article 2	"mean low water springs" or "MLWS" means the lowest	"mean low water springs" or "MLWS" means the lowest	Typo – delete additional line return

Reference	Text as set out in the draft DCO [REP5a-002]	ExA's Recommended Amendment	Reason and Notes
	<p>level which spring tides reach on average over a period of time;</p> <p>"monopile foundation" means a steel pile, driven and/or drilled into the seabed and associated equipment including J-tubes, corrosion protection systems and access platforms and equipment;</p>	<p>level which spring tides reach on average over a period of time;</p> <p>"monopile foundation" means a steel pile, driven and/or drilled into the seabed and associated equipment including J-tubes, corrosion protection systems and access platforms and equipment;</p>	
Article 2	"SNCB" means a statutory nature conservation body, being an organisation charged by government with advising on nature conservation matters;	"SNCB" means statutory nature conservation body being the appropriate nature conservation body as defined in Regulation 5 of the Conservation of Habitats and Species Regulations 2017;	For clarity and precision
Article 2	n/a	"statutory undertaker" means any person falling withing section 127(8) of the 2008 Act and a public communications provider as defined in section 151 of the 2003 Act;	Statutory undertaker is referred to in Articles 21, 22, 30, 31, 45 and Part 2 of Schedule 9 but is currently not defined.
Article 2(3)	All distances, directions, capacities, volumes and	All distances, directions, capacities, volumes and	For clarity and precision

Reference	Text as set out in the draft DCO [REP5a-002]	ExA's Recommended Amendment	Reason and Notes
	lengths referred to in this Order are approximate unless otherwise indicated and distance between points on a work comprised in the authorised development will be taken to be measured along that work	lengths referred to in this Order are approximate, save in respect of the parameters referred to in— (a) requirements 2 to 5 in Part 3 of Schedule 1 (requirements); (b) conditions 1 to 3 in Part 2 of Schedule 11 (conditions); and (c) conditions 1 to 3 in Part 2 of Schedule 12 (conditions).	
Article 3 (2)	Work Nos. 1 to 5 (save for those elements of Work No.5(a) located sit landward of MHWS...	Work Nos. 1 to 5 (save for those elements of Work No.5(a) located sit landward of MHWS...	Typo – delete sit
Article 5	n/a	Insert 'where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraphs (5), (7), (10) and the first reference in (11), include references to the transferee or lessee.'	As currently drafted the DCO refers to 'the undertaker' however Article 5 does not define 'the undertaker' to also include references to the transferee or lessee should the benefit of the order be transferred.
Article 7 (1)(a)(i)	"....notice served under section 60 (control of noise	"....notice served under section 60 (control of noise	For clarity and precision

Reference	Text as set out in the draft DCO [REP5a-002]	ExA's Recommended Amendment	Reason and Notes
	on construction site), or a consent given under section 61 (prior consent for work on construction site); or"	on construction site), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974 ; or	
Article 24(5)	Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications)	Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).	Typo – missing full stop
Article 29(2)	"Not less than 14 days before entering on and taking possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land."	"Not less than 28 days before entering on and taking possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land."	14 days is considered a very short notice period and is not consistent with other notice periods in relation to Compulsory Acquisition/ Temporary Possession eg article 29(15), article 29(3) and (15).
Article 29(13)	At any time where the undertaker has taken temporary possession of any part of the Driffield Navigation under this article, on the commencement date specified in the notice given under paragraph [15] and for the duration specified in notice given under paragraph (15), the public right of	At any time where the undertaker has taken temporary possession of any part of the Driffield Navigation under this article, on the commencement date specified in the notice given under paragraph (15) and for the duration specified in notice given under paragraph (15), the public right of	Typo – use of square brackets

Reference	Text as set out in the draft DCO [REP5a-002]	ExA's Recommended Amendment	Reason and Notes
	navigation over that part of the Driffield Navigation is suspended and unenforceable against the Driffield Navigation Trust.	navigation over that part of the Driffield Navigation is suspended and unenforceable against the Driffield Navigation Trust.	
Article 29(15)	Not later than [28] days prior to the proposed commencement of any suspension of the public right of navigation over the Driffield Navigation under this article, the undertaker must give written notice to the Driffield Navigation Trust except in the case of an emergency when the undertaker must give such notice as is reasonably practicable.	Not later than [28] days prior to the proposed commencement of any suspension of the public right of navigation over the Driffield Navigation under this article, the undertaker must give written notice to the Driffield Navigation Trust except in the case of an emergency when the undertaker must give such notice as is reasonably practicable.	Typo – square brackets are not required
Article 30 (a)	Acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to the statutory undertakers shown on the land plans with the Order land;	Acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to the statutory undertakers shown on the land plans with the Order land and described in the book of reference;	For clarity and precision
Article 40(2)	Part 4 of Schedule 1 (procedure for discharge of requirements has effect in relation to all agreements or	Part 4 of Schedule 1 (procedure for discharge of requirements) has effect in relation to all agreements or	Typo – add end bracket

Reference	Text as set out in the draft DCO [REP5a-002]	ExA's Recommended Amendment	Reason and Notes
	approvals granted, refused or withheld in relation to requirements included in Part 3 of that Schedule.	approvals granted, refused or withheld in relation to requirements included in Part 3 of that Schedule.	
Article 43 (2)	Paragraph (1) does not apply to the exercise of any right under this Order for the Compulsory Acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.	Either delete or amend to read: Paragraph (1) does not apply to the exercise of any right under this Order for the Compulsory Acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown and the appropriate Crown authority has consented to the acquisition.	As currently drafted, it would be in breach of Section 135(1) of the Planning Act 2008
SCHEDULES			
Schedule 1			
Part 1, 1. <i>Work No. 4</i>	A temporary work area associated with Work No. 2 and Work No. – 3 for vessels to carry out anchoring and positioning alongside Work No. 2 or Work No. 3;	A temporary work area associated with Work No. 2 and Work No. 3 for vessels to carry out anchoring and positioning alongside Work No. 2 or Work No. 3;	Typo – delete hyphen
Part 3, Requirement 2(10)	(10)- (a) No offshore electrical installation or offshore accommodation	(10) No offshore electrical installation or offshore accommodation platform—	For consistency eg with 2(5)

Reference	Text as set out in the draft DCO [REP5a-002]	ExA's Recommended Amendment	Reason and Notes
	<p>platform jacket foundation employing pin piles forming part of the authorised project may—</p> <p>(i) have a pin pile diameter of greater than four metres; and</p> <p>(ii) employ more than 16 pin piles per jacket foundation; and</p> <p>(b) No offshore electrical installation or offshore accommodation platform monopile foundation forming part of the authorised project may have a diameter greater than 15 metres.</p>	<p>(a) jacket foundation employing pin piles forming part of the authorised project may—</p> <p>(i) have a pin pile diameter of greater than four metres; and</p> <p>(ii) employ more than 16 pin piles per jacket foundation; and</p> <p>(b) monopile foundation forming part of the authorised project may have a diameter greater than 15 metres.</p>	
Part 3, Requirement 12	<p>Fencing and other means of enclosure</p> <p>12(1) No stage of the connection works may commence until details of all proposed permanent fences, walls or other means of enclosure of that stage of the connection works have been submitted to and approved by the relevant planning authority.</p> <p>(2) The details submitted under paragraph (1) must be</p>	<p>Fencing and other permanent means of enclosure</p> <p>12(1) No stage of the connection works may commence until details of all proposed permanent fences, walls or other means of enclosure of that stage of the connection works have been submitted to and approved by the relevant planning authority.</p>	For clarity

Reference	Text as set out in the draft DCO [REP5a-002]	ExA's Recommended Amendment	Reason and Notes
	<p>in accordance with the outline design plan.</p> <p>(3) The details of any temporary fences, walls or other means of enclosure must be included in the code of construction practice approved under requirement 17 (which must accord with the outline code of construction practice).</p> <p>(4) All construction sites must remain securely fenced at all times during construction of the connection works in accordance with the fencing plan approved under subparagraph (3) above.</p> <p>(5) Any approved permanent fencing in relation to the connection works in Work No. 7 must be completed before those works are brought into use and must be maintained for the operational lifetime of the connection works in Work No. 7.</p>	<p>(2) The details submitted under paragraph (1) must be in accordance with the outline design plan.</p> <p>(3) Any approved permanent fencing in relation to the connection works in Work No. 7 must be completed before those works are brought into use and must be maintained for the operational lifetime of the connection works in Work No. 7.</p> <p>New Requirement:</p> <p>Temporary fencing and other temporary means of enclosure</p> <p>(1) The details of any temporary fences, walls or other means of enclosure must be included in the code of construction practice approved under requirement 17 (which must accord with the outline code of construction practice).</p>	

Reference	Text as set out in the draft DCO [REP5a-002]	ExA's Recommended Amendment	Reason and Notes
		<p>(2) All construction sites must remain securely fenced at all times during construction of the connection works in accordance with the fencing plan approved under sub-paragraph (1) above.</p> <p>(3) The temporary fencing or other temporary means of enclosure must be removed on completion of that stage of the connection works to the satisfaction of the relevant planning authority.</p>	
Part 3, Requirement 14(1)	(1) No stage of the connection works may commence until a scheme to deal with the contamination of any land (including groundwater)...	(1) No stage of the connection works may commence until a written scheme to deal with the contamination of any land (including groundwater)...	For clarity and precision
Part 3, Requirement 16 (2)	Archaeological investigations carried out as part of site preparation works must only take place in accordance with a specific written scheme of investigation	Archaeological investigations carried out as part of site preparation works must only take place in accordance with a specific written scheme of investigation	For consistency with part 1 of Requirement 16

Reference	Text as set out in the draft DCO [REP5a-002]	ExA's Recommended Amendment	Reason and Notes
	(which must accord with the details set out in the outline written scheme of investigation for onshore archaeology)...	(which must accord with the details set out in the outline written scheme of investigation for onshore archaeology)...	
Part 3, Requirement 19, Footnote (a)	S.I. 2010/490	S.I. 2017/1012	Incorrect reference
Part 3, Requirement 20	Any land landward of MLWS within the Order limits which is used temporarily for construction of the connection works and not ultimately incorporated into permanent works or approved landscaping, must be reinstated in accordance with such details as the relevant planning authority in consultation with, where appropriate, the MMO, and the relevant highway authority, may approve, as soon as reasonably practicable and in any event within twelve months of the completion of the connection works.	Any land landward of MLWS within the Order limits which is used temporarily for construction of the connection works and not ultimately incorporated into permanent works or approved landscaping, must be reinstated in accordance with such details as have been submitted to and approved by the relevant planning authority in consultation with, where appropriate, the MMO, and the relevant highway authority, may approve, as soon as reasonably practicable and in any event within twelve months of the completion of the connection works.	For clarity and precision
Part 4, 2(1)	(1) where an application has been made to the	(1) where an application has been made to the	Typo

Reference	Text as set out in the draft DCO [REP5a-002]	ExA's Recommended Amendment	Reason and Notes
	discharging authority for any consent, agreement or approval required by a requirement contained within Part 2 of this Schedule	discharging authority for any consent, agreement or approval required by a requirement contained within Part 3 of this Schedule	
Part 4, 4(1)(a)(i) and (ii)	(i) a requirement contained within Part 2 of this Schedule; or (ii) a document referred to in any requirement contained within Part 2 of this schedule;	(i) a requirement contained within Part 3 of this Schedule; or (ii) a document referred to in any requirement contained within Part 3 of this schedule;	Typo
Schedule 4			
Part 4(2)	Temporarily suspended access to the are shaded green on the public rights of way plan	Temporarily suspended access to the area shaded green on the public rights of way plan	Typo
Schedule 9			
Part 5, 4(4)	If any part of the specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Part or (if the undertaker	If any part of the specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Part or (if the	Typo

Reference	Text as set out in the draft DCO [REP5a-002]	ExA's Recommended Amendment	Reason and Notes
	so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where is required, to restore the site to its former condition to such extent and within such limits as the agency reasonably requires.	undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where is required, to restore the site to its former condition to such extent and within such limits as the agency reasonably requires.	
Schedule 11			
Part 1, 1 " <i>environmental statement</i> "	"environmental statement" means the document certified as the environmental statement by the Secretary of State for the purposes of the Order;	"environmental statement" means the document certified as the environmental statement by the Secretary of State for the purposes of the Order under Article 38 (certification of plans and documents, etc);	For consistency and clarity
Part 1, 1 " <i>Kingfisher Information Service</i> "	"Kingfisher Information Service" means the information service from non-departmental government body Seafish; "large offshore transformer substation" means the larger version of the offshore transformer substations	"Kingfisher Information Service" means the information service from non-departmental government body Seafish; "large offshore transformer substation" means the larger version of the offshore transformer substations	Layout issue – insert line return

Reference	Text as set out in the draft DCO [REP5a-002]	ExA's Recommended Amendment	Reason and Notes
	assessed in the environment statement;	assessed in the environment statement;	
Part 1, 1 " <i>offshore works plan</i> "	"offshore works plan" means the plan certified as the offshore works plan by the Secretary of State for the purposes of the Order;	"offshore works plan" means the plan certified as the offshore works plan by the Secretary of State for the purposes of the Order under Article 38 (certification of plans and documents, etc);	For consistency and clarity
Part 1, 3 (a)	(a) all times are taken to be GMT;	(a) all times are taken to be Greenwich Mean Time;	For clarity and precision
Part 1	n/a	"statutory nature conservation body" being the appropriate nature conservation body as defined in Regulation 5 of the Conservation of Habitats and Species Regulations 2017.	Statutory nature conservation body is referred to in Conditions 18, 19 and 24 but is not defined within Part 1. Same definition as used in Article 2 is suggested.
Condition 22 (1)	An annual maintenance report must be submitted to the MMO in writing one month following the first anniversary of the date of commencement of operation, and every year thereafter.	An annual maintenance report must be submitted to the MMO in writing one month following the first anniversary of the date of commencement of operation, and every year thereafter until the permanent cessation of operation.	For clarity as currently worded the Condition would require the submission of an annual maintenance report in perpetuity.
Schedule 12			

Reference	Text as set out in the draft DCO [REP5a-002]	ExA's Recommended Amendment	Reason and Notes
Part 1, 1 " <i>environmental statement</i> "	"environmental statement" means the document certified as the environmental statement by the Secretary of State for the purposes of the Order;	"environmental statement" means the document certified as the environmental statement by the Secretary of State for the purposes of the Order under Article 38 (certification of plans and documents, etc);	For consistency and clarity
Part 1, 1 " <i>offshore works plan</i> "	"offshore works plan" means the plan certified as the offshore works plan by the Secretary of State for the purposes of the Order;	"offshore works plan" means the plan certified as the offshore works plan by the Secretary of State for the purposes of the Order under Article 38 (certification of plans and documents, etc);	For consistency and clarity
Part 1, 1 " <i>statutory historic body</i> "	"statutory historic body" means the Historic England, the relevant local authority or its successor in function;	"statutory historic body" means the Historic England, the relevant local authority or its successor in function;	Typo and deletion for consistency with definition in Schedule 11
Part 1, 3 (a)	(a) all times are taken to be GMT;	(a) all times are taken to be Greenwich Mean Time;	For clarity and precision
Part 1	n/a	"statutory nature conservation body" being the appropriate nature conservation body as defined in Regulation 5 of the Conservation of Habitats and Species Regulations 2017.	Statutory nature conservation body is referred to in Conditions 18 and 19 but is not defined within Part 1. Same definition as used in Article 2 is suggested.

Reference	Text as set out in the draft DCO [REP5a-002]	ExA's Recommended Amendment	Reason and Notes
Condition 24 (1)	An annual maintenance report must be submitted to the MMO in writing one month following the first anniversary of the date of commencement of operation, and every year thereafter.	An annual maintenance report must be submitted to the MMO in writing one month following the first anniversary of the date of commencement of operation, and every year thereafter until the permanent cessation of operation.	For clarity as currently worded the Condition would require the submission of an annual maintenance report in perpetuity.