



# Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Projects

The Applicant's Further Responses to the Examining  
Authority's Fourth Written Questions

**Revision A**

Deadline 8

July 2023

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## **1 The Applicant's further comments on the Examining Authority's Fourth Written Questions**

1. Following the issue of the Fourth Written Questions by the Examining Authority (ExA) to Equinor New Energy Limited (the Applicant) and other Interested Parties, the Applicant has subsequently responded to each of those relevant questions. The Applicant is providing further comment on the responses provided by them at Deadline 7 where it was indicated that a further update would be provided, detailed in **Table 1** below.

*Table 1 The Applicant's further comments on the Examining Authority's Fourth Written Questions*

ID	Question	Applicant's Comment	Applicant's Further Comment
<b>Q4.4. Civil and Military Aviation</b>			
<b>Q4.4.1 Effects on Radar and Defence Interests and Proposed Mitigation</b>			
Q4.4.1.1	<p><b>Mitigation with National Air Traffic Services</b></p> <p>Provide evidence of agreement between the Applicant and both NATs and Norwich Airport (along with CAA if applicable) on the necessary mitigation required relating to effects of the Proposed Development on radar and progress towards a mitigation plan, together with any corresponding change to the dDCO.</p>	<p><b><u>NATs</u></b></p> <p>The Applicant and NATs are continuing to engage on this matter. The Mitigation and Services Contract for the Project is currently with NATs for a second review and the Applicant has no reason to believe that an agreement is not forthcoming. As soon as the agreement is entered in to, the Applicant understands that NATs will be in a position to withdraw its objection.</p> <p><b><u>Norwich Airport</u></b></p> <p>The Applicant refers to the draft <b>Statement of Common Ground (SoCG) with Norwich Airport (Revision C)</b> [document reference 16.23] submitted at this deadline which provides the latest position between the Applicant and Norwich Airport. In summary, Norwich Airport agrees that the wording of Requirement 28 of the <b>dDCO (Revision J)</b> [document reference 3.1] is sufficient to secure necessary mitigation and avoid unacceptable impacts on the Claxby and Cromer PSRs. Norwich Airport agrees that radar blanking of the affected PSR together (through NATs) with an extension of the Greater Wash TMZ (through the CAA) would mitigate the predicted affect to the Claxby and Cromer PSRs. The mitigation is also detailed in the <b>Schedule of Mitigation and Mitigation Routemap</b> [APP-282].</p>	<p><b><u>NATs</u></b></p> <p>The following update has been agreed between the Applicant and NATs: The Applicant and NATs are very close to reaching an agreed position on the mitigation services agreement with little difference between the parties. Agreed wording for the mitigation requirement (Requirement 28) has been included in the <b>DCO (Revision K)</b> [document reference 3.1]. Until the Applicant and NATs have completed the relevant agreements, NATs will maintain their holding objection, but the parties are confident that this will be resolved soon after the close of Examination with an update to be provided to the Secretary of State at decision stage.</p> <p><b><u>Norwich Airport</u></b></p> <p>Please see the <b>Final Statement of Common Ground (SoCG) with Norwich Airport (Revision D)</b> [document reference 16.23].</p>

ID	Question	Applicant's Comment	Applicant's Further Comment
<b>Q4.8. Compulsory Acquisition and Temporary Possession</b>			
<b>Q4.8.3 Special Land</b>			
Q4.8.3.1	<p><b>Public Open Space</b></p> <ul style="list-style-type: none"> <li>a) Provide an update on negotiations.</li> <li>b) Provide evidence of final agreements for close of Examination.</li> <li>a) If final agreements are not received for close of Examination, provide updates expected and corresponding timescales after close of Examination in Signed Final SoCG or a similar joint signed statement.</li> </ul>	<ul style="list-style-type: none"> <li>a) The Applicant refers to document <b>Open Space Agreements Updates (Revision C)</b> [document reference 12.48] as the most up to date statement, and as provided at the Compulsory Acquisition Hearing on the 22<sup>nd</sup> June.</li> <li>b) The Applicant does not expect to complete the Option Agreements prior to close of Examination.</li> <li>c) The Applicant has written to Louise Savory, Norfolk County Council and Broadland District Council following the ExA's request. All other parties within <b>Open Space Agreements Updates (Revision C)</b> [document reference 12.48] are leasehold interests and captured within the joint statements the Applicant is attempting to agree with the freeholders.</li> </ul>	<p>Please see <b>Final Joint Position Statement on Open Space Agreements between the Applicant and Norfolk County Council</b> [document reference 22.12], the <b>Applicant's Position Statement on Open Space Agreements with Broadland District Council</b> [document reference 22.12], and the <b>Final Joint Position Statement on Open Space Agreements between the Applicant and Louise Savory</b> [document reference 22.14].</p>
<b>Q4.8.3 Special Land</b>			
Q4.8.3.3	<p><b>Crown Land</b></p> <ul style="list-style-type: none"> <li>b) Provide an update on negotiations.</li> <li>c) Provide evidence of final agreements for close of Examination.</li> <li>d) If final agreements are not received for close of Examination, provide updates expected and corresponding timescales after close of Examination in Signed Final SoCG or a similar joint signed statement.</li> </ul>	<p>The Applicant has been in discussions with The Crown Estate Commissioners in connection with the provision of the necessary Crown authority (pursuant to section 135 of the Planning Act 2008) in regard to powers sought in relation to Crown Land and/or Crown rights. An agreed position has now been reached and the Commissioners have confirmed that they expect to be in a position to issue a letter of consent by Deadline 8.</p>	<p>Please see the <b>Compulsory Acquisition Schedule (Revision D)</b> [document reference 12.5].</p> <p><b><u>The Crown Estate</u></b></p> <p>The Applicant understands that the Crown is intending to provide their letter of consent at Deadline 8.</p>

ID	Question	Applicant's Comment	Applicant's Further Comment
		<p>The Applicant and the Ministry of Defence ("MOD") have now agreed the wording for Requirement 27 of the <b>draft DCO (Revision J)</b> [document reference 3.1] and there are no matters outstanding between them. As such, the Applicant anticipates that confirmation of s135 consent will be forthcoming for Deadline 8.</p> <p>At Compulsory Acquisition Hearing 2 (see <b>Written Summary of the Applicant's Oral Submissions at Compulsory Acquisition Hearing 2</b> [document reference 21.4]), the Applicant confirmed in relation to the Forestry Commission land, that agreement has been reached and as such The Secretary of State for Environment, Food and Rural Affairs has confirmed its s135 consent. Please see <b>Appendix B.5 – Supporting Documents for the Applicant's Responses to the Examining Authority's First Written Questions</b> [REP1-039].</p> <p>As confirmed at Compulsory Acquisition Hearing 2 (see <b>Written Summary of the Applicant's Oral Submissions at Compulsory Acquisition Hearing 2</b> [document reference 21.4]), the Department for Transport have delegated the section 135 consent to National Highways and the Applicant is now liaising directly with an allocated individual at National Highways to progress the necessary s135 consent. The Applicant is responding to a query raised by the Department for Transport and National Highways and will continue to work towards securing the necessary consent for Deadline 8. In the event this is not achieved, the Applicant</p>	<p><b><u>Ministry of Defence</u></b></p> <p>The Ministry of Defence have not confirmed that the section 135 letter will be provided to the Examination but there are no outstanding points between the parties and the Applicant is confident that the letter will be forthcoming shortly following the close of Examination. See <b>Final Statement of Common Ground (SoCG) (Revision B)</b> [document reference 12.27].</p> <p><b><u>Department for Transport</u></b></p> <p>The Applicant has provided further information in relation to the affected plots to the representative appointed to deal with the Section 135 consent at National Highways. No further communications have been received in response. The Applicant will continue to work with National Highways within the 3 months following the end of examination such that an update can be provided to the Secretary of State when the matter is referred to the Secretary of State for decision.</p> <p><b><u>The Forestry Commission</u></b></p> <p>As per the Deadline 7 response.</p>



ID	Question	Applicant's Comment	Applicant's Further Comment
		will continue to work with National Highways within the 3 months following the end of examination such that an update can be provided to the Secretary of State when the matter is referred to the Secretary of State for decision.	
Q4.8.3.4	<p><b>Statutory Undertaker Land</b></p> <p>a) The ExA has seen the Current Status of Statutory Undertaker Negotiations [REP5-037] and requests an update at Deadline 7.</p> <p>b) Provide evidence of final agreements for close of Examination.</p> <p>c) If final agreements are not received for close of Examination, provide updates expected and corresponding timescales after close of Examination in signed final SoCG or a similar joint signed statement.</p>	<p>a) The Applicant refers to document <b>The Applicant's Statutory Undertakers Position Statement (Revision D)</b> [document reference 12.46] as the most up to date statement.</p> <p>b) The Applicant has requested that Statutory Undertakers write to the Examining Authority for Deadline 8 to confirm the position has been agreed and withdrawing their representations on that basis.</p> <p>c) The Applicant will submit a final Statutory Undertaker's Position Statement to provide the necessary updates at Deadline 8.</p>	Please see <b>The Applicant's Statutory Undertakers Position Statement (Revision E)</b> [document reference 12.46] and further comments on WQ4.8.5.1.
<b>Q4.8.5 General</b>			
Q4.8.5.1	<p><b>Protective Provisions</b></p> <p>a) Applicant and relevant party, for each set of Protective Provisions that is not agreed, provide jointly with the relevant party copies of Applicant's proposed drafting and the drafting required by the party, highlighting the areas of difference. Update this at D8.</p> <p>b) Applicant and relevant party, for Protective Provisions where final agreements is not likely for close of Examination, provide updates expected</p>	The Applicant refers to <b>The Applicant's Statutory Undertakers Position Statement (Revision D)</b> [document reference 12.46] which confirms which protective provisions have been agreed for Deadline 7 and, where protective provisions are not yet agreed, sets out the matters outstanding and whether or not these will be agreed by the end of examination. Where protective provisions are unlikely to be agreed, the Applicant will endeavour to reach agreement with the relevant statutory undertaker(s) within the 3 months following the end of examination such that an update can be provided to the	<p>The Applicant refers to <b>The Applicant's Statutory Undertakers Position Statement (Revision E)</b> [document reference 12.46].</p> <p>The Applicant has not reached a final agreed position with the following:</p> <ol style="list-style-type: none"> <li>1. Network Rail – see <b>the Statutory Undertakers Position Statement (Revision E)</b> [document reference 12.46] for further details;</li> <li>2. National Highways – see <b>the Statutory Undertakers Position Statement</b></li> </ol>



ID	Question	Applicant's Comment	Applicant's Further Comment
	<p>and corresponding timescales after close of Examination in signed final SoCG or a similar joint signed statement.</p>	<p>Secretary of State when the matter is referred to the Secretary of State for decision. The Applicant will submit a final Statutory Undertaker's Position Statement to provide the necessary update at Deadline 8.</p>	<p><b>(Revision E)</b> [document reference 12.46] and <b>The Applicant's Response to National Highways Serious Detriment and Protective Provision Submissions</b> [document reference 22.4.1] for further details;</p> <p>3. Norfolk County Council in their role as promotor of the Norwich Western Link Road – see <b>The Applicant's Comments on Norwich Western Link's Deadline 7 Submission</b> [document reference 22.6] and <b>The Statutory Undertakers Position Statement (Revision E)</b> [document reference 12.46] or further details;</p> <p>4. Orsted Hornsea Project Three – see <b>The Applicant's Comments on Orsted Hornsea Project Three Deadline 7 Submission</b> [document reference 22.7] and the <b>Joint Position Statement Orsted and Equinor</b> [document reference 22.29] for further details;</p> <p>5. Orsted Hornsea Project Four – see <b>The Applicant's Comments on Orsted Hornsea Project Four Deadline 7 Submission</b> [document 22.8] and the <b>Joint Position Statement Orsted and Equinor</b> [document reference 22.29] for further details; and</p> <p>6. Perenco – see <b>The Applicant's Statutory Undertakers Position Statement (Revision E)</b></p>

ID	Question	Applicant's Comment	Applicant's Further Comment
			<p>[document reference 12.46] and <b>The Applicant's Comments on Perenco UK Limited's Deadline 7 Submission</b> [document reference 22.32] for further details.</p> <p>The Applicant will continue to work with these statutory undertakers to endeavour to reach agreement with them within the 3 months following the end of Examination such that an update can be provided to the Secretary of State when the matter is referred to the Secretary of State for decision.</p>
<b>Q4.11. Draft Development Consent Order</b>			
<b>Q4.11.1 General and cross-cutting</b>			
Q4.11.1.1	<p><b>Format of Providing the dDCO and Explanatory Memorandum with Track Changes</b></p> <p>Provide the track change version of the dDCO and EM that shows all the changes made since the submissions of the application for all versions provided until the close of the Examination.</p>	<p>Please see <b>Draft Development Consent Order (Revision J) (Full Tracked Revisions A/J)</b> [document reference 3.1.4] and <b>Explanatory Memorandum (Tracked – Revisions A/H)</b> [document reference 3.2.2]. The Applicant confirms that it will provide further updates to these documents at Deadline 8.</p>	<p>Please see <b>draft DCO (Revision K) (Full Tracked Revisions A/K)</b> [document reference 3.1.4] and <b>Explanatory Memorandum (Tracked – Revisions A/I)</b> [document reference 3.2.2].</p>
<b>Q4.11.2 Content</b>			
Q4.11.2.1	<p><b>Applicant's Confirmation of Final Review at the final Examination Deadline</b></p> <p>Provide the review as indicated [REP5-051, DC1.1.2.1].</p>	<p>The Applicant confirms that it is continuing to undertake this review and will finalise it for Deadline 8.</p>	<p>The Applicant undertook a final review of the <b>draft DCO (Revision K)</b> [document reference 3.1]. Please see compliance table at Appendix 1 to this document.</p>
<b>Q4.12. Habitats and Ecology Offshore</b>			
<b>Q4.12.1 Effects on Ornithology</b>			

ID	Question	Applicant's Comment	Applicant's Further Comment
Q4.12.1.5	<p><b>Certified Documents and Updates</b></p> <p>It was suggested in ISH5 that some of the technical studies for ornithology (and indeed for marine mammals) may be amalgamated into the existing chapters of the ES, thus forming part of the suite of certified documents in the dDCO. In others respects, technical studies would be listed. The ExA note that ES Chapter 4 was provided at Deadline 5 [REP5-021] but no other ES Chapter updates are recorded. Provide an updated list of certified documents at D7 alongside the updated chapters of the ES (as necessary or applicable) to demonstrate all important and relevant information and mitigation is appropriately incorporated.</p>	<p>The Applicant notes that Schedule 18 of the <b>Draft DCO (Revision J)</b> [document reference 3.1] contains the list of certified documents including those technical documents in relation to offshore ornithology and marine mammals submitted during the examination period. This list has been updated at Deadline 7.</p>	<p>The final list has been included in Schedule 18 of the <b>draft DCO (Revision K)</b> [document 3.1].</p>
<b>Q4.23. Traffic and Transport</b>			
<b>Q4.23.6 Effectiveness of Proposed Mitigation Measures</b>			
Q4.23.6.2	<p><b>Protective Provisions</b></p> <p>See related question in Compulsory Acquisition and Temporary Possession.</p>	<p>An update has been provided in <b>The Applicant's Statutory Undertakers Position Statement (Revision D)</b> [document reference 12.46].</p> <p>Please also refer to the Applicants detailed response to this matter at Q4.6.1.1.</p>	<p>Please see <b>The Applicant's Statutory Undertakers Position Statement (Revision E)</b> [document reference 12.46]. Please also see further comment on Q4.8.5.1 above.</p>
<b>Q4.24. Water Quality and Resources</b>			
<b>Q4.24.3 Effects on Rivers, Streams, Canals and Ditches from Proposed Construction Methods and Crossing</b>			
Q4.24.3.2	<p><b>Statutory Undertakers Position Statement</b></p> <p>The NRIDB has [REP6-030] has requested some changes to the Applicant's Statutory Undertakers Position Statement [REP5-037].</p>	<p>The Applicant has updated the <b>Statutory Undertakers' Position Statement (Revision D)</b> [document 12.46] to reflect this drafting.</p>	<p>Agreement has been reached and the relevant authorities are writing into the Examination to confirm this at Deadline 8. Please see <b>The Applicant's Statutory Undertakers Position</b></p>

ID	Question	Applicant's Comment	Applicant's Further Comment
	<p>Applicant, are these acceptable to you and if so, provide a revised Statutory Undertakers Position Statement to accommodate them.</p> <p>See related question in Compulsory Acquisition and Temporary Possession.</p>		<p><b>Statement (Revision E)</b> [document reference 12.46].</p>
<b>Q4.24.4 Effectiveness of Mitigation Measures</b>			
Q4.24.4.1	<p><b>Protective Provisions</b></p> <p>Provide an update on discussions to finalise the protective provisions still under discussion [REP5-049, Q3.24.4.1]. If agreement will not be reached by the end of the examination, please set out in full your reasons for any disagreements.</p> <p>See related question in Compulsory Acquisition and Temporary Possession.</p>	<p>Please see <b>The Applicant's Statutory Undertakers Position Statement (Revision D)</b> [document reference 12.46].</p>	<p>Agreement has been reached and the relevant authorities are writing into the Examination to confirm this at Deadline 8. Please see <b>The Applicant's Statutory Undertakers Position Statement (Revision E)</b> [document reference 12.46].</p>

## Appendix 1 Advice Notes 13 and 15 Compliance Table

ID	Location	Requirement	Comments
<b>Advice Note 13</b>			
<b>2. The draft order</b>			
1	2.6	The DCO must be made in the form of a Statutory Instrument ("SI") if it includes "legislation provisions" that e.g. apply, amend or exclude other statutory provisions (S117(4) and s120(5)). Our experience has been that this is usually required. In such cases the draft DCO should therefore be submitted as a draft SI, and follow the statutory drafting conventions.	Please see below rows ID20 to ID88.
2	2.7	Guidance on these conventions is available online from the Office of the Parliamentary Counsel. A template for SIs is publicly available on the UK Legislation Publishing website (National Archives); please see Advice Note 15 for further details.	Noted. See ID 20 to ID87.
3	2.9	The draft DCO should include the following:- <ul style="list-style-type: none"> <li>• A full, precise and complete description of each element of the NSIP, preferably itemised in a Schedule to the DCO; and</li> <li>• A full, precise and complete description of each element of any necessary "associated development" (See s115), which should be clearly identified in a Schedule to the draft DCO. Associated development is subordinate to the NSIP, but necessary for the development to operate effectively to its design capacity.</li> <li>• Guidance has been issued by the Department for Communities and Local Government ("DCLG") on the scope of associated development ("Guidance on associated development applications for major infrastructure projects" (April 2013)).</li> <li>• Each element of the NSIP and each element any necessary associated development should be clearly set out as separate numbered 'works' in a Schedule to the draft DCO, and cross-referenced to the corresponding works shown on the works plan.</li> <li>• Terms and phrases referred to in the draft DCO should be clearly defined, and used consistently throughout the document.</li> </ul>	These are included in Schedule 1 of the <b>draft DCO (Revision K)</b> [document reference 3.1].  A review of terms and phrases has been undertaken and changes made to the <b>draft DCO (Revision K)</b> [document reference 3.1] as required.
4	2.10	The draft DCO should also include:-	Articles 1 to 46 of the <b>draft DCO (Revision K)</b> [document reference

ID	Location	Requirement	Comments
		<ol style="list-style-type: none"> <li>1. Provisions giving the developer authority to take actions necessary for the project to be implemented satisfactorily. These might include, for example, authority to compulsorily acquire land, or to stop-up streets or extinguish private rights of way, or to carry out protective works to buildings (See s120(3) and (4), and Schedule 5);</li> <li>2. Other provisions which are necessary for the purposes of the project for example, applying or amending existing legislation, or protecting the interests of persons potentially affected by compulsory land acquisition;</li> <li>3. "Requirements" to which the development authorised by the DCO is to be subject. Requirements are similar to conditions under existing consent regimes, for example specifying the matters for which detailed approval needs to be obtained before the development can be lawfully begun, for example a detailed landscaping scheme. The developer should seek to agree wording for proposed requirements with the body to whom details are to be submitted for subsequent approval, and in any event seek the local planning authority's views on proposed requirements as they will enforce any breach of the terms of any order granted.</li> </ol>	<p>3.1] provide the necessary powers.</p> <p>These are included in Schedule 2 of the <b>draft DCO (Revision K)</b> [document reference 3.1].</p>
5	2.11	<p>Model provisions were set out in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (SI 2009/2265). They included provisions which could be common to all NSIPs, others which relate to particular infrastructure development types, in particular railways and harbours, and model provisions in respect of requirements. The Localism Act 2011 removed the requirement for the decision-maker to have regard to the prescribed model provisions in deciding an application for development consent.</p>	<p>Noted. See also ID 6 below.</p>
6	2.12	<p>Model provisions were intended as a guide for developers in drafting orders, rather than a rigid structure, but aided consistency, and assisted developers to draft a comprehensive set of lawful provisions.</p>	<p>As confirmed in the <b>Explanatory Memorandum (Revision I)</b> [document reference 3.2], the Order is based on the model provisions and relevant precedent DCOs.</p>

ID	Location	Requirement	Comments
7	2.13	There is no longer a requirement to submit a tracked changed version of the draft DCO which compares the wording against The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009.	Noted.
8	2.14	If a draft DCO includes wording derived from other made DCOs, this should be explained in the Explanatory Memorandum. The Explanatory Memorandum should explain why that particular wording is relevant to the proposed draft DCO, for example detailing what is factually similar for both the relevant consented NSIP and the Proposed Development (See Advice Note 15 for further advice).	Please see the <b>Explanatory Memorandum (Revision I)</b> [document reference 3.2].
9	2.15	Provisions used in 'predecessor' regimes such as for Transport and Works Act Orders or Harbour Empowerment Orders may be helpful in the drafting of a DCO. Developers should though satisfy themselves that the inclusion of particular wording is appropriate and relevant in all the circumstances of a given project. The relevant precedent and the rationale for including the particular wording of a provision will need to be set out and justified in the explanatory memorandum.	Please see the <b>Explanatory Memorandum (Revision I)</b> [document reference 3.2].
10	2.16	The description of the proposed development together with the provisions of the DCO (including requirements) will determine what is authorised to be carried out. It is the responsibility of developers (not the Planning Inspectorate) to ensure that the draft order applied for would provide them with all the necessary powers and authorisations to implement and use their scheme.	Schedule 1 of the <b>draft DCO (Revision K)</b> [document reference 3.1] sets out the relevant works descriptions for the proposed development and Articles 1 to 46 of the <b>draft DCO (Revision K)</b> [document reference 3.1] provide the necessary powers.
11	2.18	It is essential that the drafting in the order accurately defines the land over which powers are required and is consistent with the approach taken in the land and works plans which must also be submitted with the application (Regulation 5(i) and (j) APFP), and with any other plans and drawings that the developer considers are necessary to describe their proposals.	Please see <b>draft DCO (Revision K)</b> [document reference 3.1], the <b>Land Plans (Revision E)</b> [document reference 2.3], <b>Works Plans</b>



ID	Location	Requirement	Comments
			<p>(onshore) (Revision C) [REP2-004], <b>Works Plans (offshore) (Revision D)</b> [document reference 2.7], <b>Explanatory Memorandum (Revision I)</b> [document reference 3.2], and <b>Statement of Reasons (Revision E)</b> [document reference 4.3].</p>
12	2.20	<p>If a DCO seeks to include the compulsory acquisition of certain special categories of land, such as local authority, statutory undertaker, National Trust or common land then additional procedures apply. These are either that a provision authorising the compulsory acquisition of such land cannot be included in an order unless the appropriate certificate of authorisation is issued by the Secretary of State; or in some cases once a decision to grant an order is made, the order will be subject to special parliamentary procedure before it comes into effect (ss127-132).</p>	<p>Please see the <b>Compulsory Acquisition Schedule (Revision D)</b> [document reference 12.5], <b>Statutory Undertaker's Position Statement (Revision E)</b> [document reference 12.46] and <b>The Applicant's Further Responses to the Examining Authority's Fourth Written Questions</b> [document reference 22.19].</p>
13	2.21	<p>Developers should obtain any required certificate before submission of the application wherever possible (under s127 and/or s131) or at least have made some progress towards obtaining any necessary certificate.</p>	<p>Please see the <b>Compulsory Acquisition Schedule (Revision D)</b> [document reference 12.5], <b>Statutory Undertaker's</b></p>

ID	Location	Requirement	Comments
			<p><b>Position Statement (Revision E)</b> [document reference 12.46] and <b>The Applicant's Further Responses to the Examining Authority's Fourth Written Questions</b> [document reference 22.19].</p>
14	2.22	The explanatory memorandum should confirm the stage reached in these procedures.	<p>Whilst this has not been included in the <b>Explanatory Memorandum (Revision I)</b> [document reference 3.2], updates have been provided in response to written questions and the latest update is included in <b>The Applicant's Further Responses to the Examining Authority's Fourth Written Questions</b> [document reference 22.19].</p>
15	2.23	It is also possible for a draft order to include provisions which remove the need to obtain certain additional authorisations. It is necessary for the authority responsible for granting the authorisation to consent to this process. The list of authorisations which can be treated in this way is contained in Schedule 2 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015.	<p>Please see the <b>Statutory Undertaker's Position Statement (Revision E)</b> [document reference 12.46] and <b>The Applicant's Further Responses to</b></p>

ID	Location	Requirement	Comments
			<p><b>the Examining Authority's Fourth Written Questions</b> [document reference 22.19].</p>
16	2.24	The explanatory memorandum should identify the authorisation, the reasons why the developer is following this route and should state how close the developer is to achieving the consent of the authority concerned.	Please see the <b>Explanatory Memorandum (Revision I)</b> [document reference 3.2] and the <b>Statutory Undertaker's Position Statement (Revision E)</b> [document reference 12.46].
17	2.25	Where a developer is seeking separate authorisations or licences these should be separately listed in the application submitted to the Planning Inspectorate (See "Planning Act 2008 : Nationally Significant Infrastructure Projects ; Application form guidance" (DCLG June 2013)).	Please see the <b>Details of Other Consents and Licences</b> [APP-286].
18	2.26	The draft order must be accompanied by an explanatory memorandum (Regulation 5(2)(c) APFP) explaining the purpose and effect of each provision in a draft order (explaining, for example, why it is considered necessary).	Please see the <b>Explanatory Memorandum (Revision I)</b> [document reference 3.2].
19	2.27	In addition to including any comments on special category land, authorisations under s150 and 'legislation provisions' explained above, the explanatory memorandum should identify relevant precedents for any provisions.	
<b>Advice Note 15</b>			
<b>1. The Explanatory Memorandum</b>			
20	1.1	The Explanatory Memorandum is an aid to the Examining Authority (ExA), to Interested Parties and to the Secretary of State as decision-maker to help understand what is proposed in the draft Development Consent	Please see the <b>Explanatory</b>

ID	Location	Requirement	Comments
		Order (DCO), why particular provisions have been included and from where the wording has been derived. The Explanatory Memorandum explains why draft DCO provisions have been tailored to meet the specific needs of a particular Nationally Significant Infrastructure Project (NSIP) (and may be required to address novel issues). It should also explain why the provisions are required, having regard to the scope and breadth of powers contained in the Planning Act 2008 (PA2008).	<b>Memorandum (Revision I)</b> [document reference 3.2].
21	1.2	A thorough justification should be provided in the Explanatory Memorandum for every Article and Requirement, explaining why the inclusion of the power is appropriate in the specific case. The extent of justification should be proportionate to the degree of novelty and/ or controversy in relation to the inclusion of that particular power.	Please see the <b>Explanatory Memorandum (Revision I)</b> [document reference 3.2].
22	1.3	There is no longer a requirement to submit a tracked changed version of the draft DCO which compares the wording against The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009.	Noted
23	1.4	<p>A well-developed Explanatory Memorandum can potentially reduce the number of examination questions an ExA may need to ask about the draft provisions comprising the draft DCO. For each provision, the ExA is likely to want to be satisfied about certain matters, such as:</p> <ul style="list-style-type: none"> <li>• The source of the provision (whether it be a previous made DCO or Transport and Works Act Order, or a novel provision).</li> <li>• The section/ Schedule of the PA2008 under which it is made.</li> <li>• Why it is relevant to the Proposed Development.</li> <li>• Why the Applicant considers it to be important/ essential to the delivery of the Proposed Development.</li> </ul>	Please see the <b>Explanatory Memorandum (Revision I)</b> [document reference 3.2].
24	1.5	If a draft DCO includes wording derived from other made DCOs, this should be explained in the Explanatory Memorandum. The Explanatory Memorandum should explain why that particular wording is relevant to the proposed draft DCO, for example detailing what is factually similar for both the relevant consented NSIP and the Proposed Development. It is not sufficient for an Explanatory Memorandum to simply state that a particular provision has found favour with the Secretary of State previously; the ExA and Secretary of State will need to understand why it is appropriate for the scheme applied for. Any divergence in wording from the consented DCO drafting should also be explained. Note, though, that policy can change and develop.	Please see the <b>Explanatory Memorandum (Revision I)</b> [document reference 3.2].

ID	Location	Requirement	Comments
25	1.6	Where applicants are seeking to include specific wording or apply a particular approach from a different statutory regime in a draft DCO, the reasons for doing so and the relevance of this to the application should also be made clear in the Explanatory Memorandum. For example, where an applicant has used wording from an Order made under the Transport and Works Act 1992, the particular Order in question should be clearly identified and the reason for including this wording in the draft DCO explained. Applicants will again need to consider whether such a provision is within the powers of the PA2008 and include comments on this point in the Explanatory Memorandum.	Please see the <a href="#">Explanatory Memorandum (Revision I)</a> [document reference 3.2].
<b>DCO form and language – general approach</b>			
<b>2. Statutory Instrument template</b>			
26	2.1	A DCO must be made in the form of a validated Statutory Instrument (SI) if, as is usually the case, it includes 'legislative provisions' that for example apply, amend or exclude other statutory provisions (see section 117(4) and section 120(5) of the PA2008). SIs need to conform to a template which is publicly available on the UK Legislation Publishing website (National Archives). The template contains essential formatting for SIs.	The Applicant confirms that the <a href="#">draft DCO (Revision I)</a> [document 3.1] has been produced using the SI word template. The applicant provided confirmation of validation at Deadline 1. See <a href="#">The Applicant's Responses to the Examining Authority's First Written Questions</a> [REP1-036] and Appendix B.11 of <a href="#">Supporting Documents for the Applicant's Responses to the ExA's First Written Questions</a> [REP1-039].  The Applicant has been submitting the draft
27	2.2	Applicants will need to obtain access to the online SI template and associated validation system which assesses whether the drafting in an instrument agrees with the rules for drafting within the template. The Planning Inspectorate's Case Manager will fill in the relevant application form on behalf of the Applicant and submit it to the National Archives. Please contact the Planning Inspectorate in case of any difficulty obtaining access to the template.	
28	2.3	The SI template may be updated periodically. Applicants should contact the Planning Inspectorate's Case Manager to ensure they are using the latest template.	
29	2.4	All copies of the draft DCO submitted to the Planning Inspectorate (including the Applicant's final draft DCO submitted towards the end of the Examination) must have been cleared through the validation process and be accompanied by a copy of the Validation Success email which evidences that the draft DCO is error free and on the correct version of SI template. Should draft DCOs be submitted with errors or without a	

ID	Location	Requirement	Comments
		successful validation email, applicants will be asked to resolve the errors and resubmit with a Validation Success email.	<p>DCO for validation regularly including following each deadline. Given the size of the DCO the SI Office has not always been able to produce an electronic validation report but where necessary has undertaken manual checks and provided the Applicant with feedback via email. The Applicant has duly corrected any errors highlighted by the SI Office.</p> <p>The Applicant submitted the final draft DCO for validation on Friday, 14<sup>th</sup> July 2023. It took until 8.43am on Monday, 17<sup>th</sup> July 2023 for the validation process to run and it identified a relatively small number of remaining formatting errors which the Applicant has since corrected. The Applicant then resubmitted the final version of the DCO for validation at 11.27am.</p>

ID	Location	Requirement	Comments
			<p>Unfortunately, despite the Applicant and the SI Offices best endeavours, the SI Office has been unable to provide the Applicant with a final validation report before the close of examination on this occasion. There is precedent (see Awel y Mor) for validation reports being accepted after the close of Examination for the reasons that the process of obtaining a validation report is outside the control of the Applicant.</p>
<b>3. Drafting conventions</b>			
30	3.2	<p>Where Deemed Marine Licences or other deemed consents or licences are included within a draft DCO, they must also follow the statutory drafting conventions for SIs. However, note that they are also self-contained licences and need to not be dependent on definitions in the body of the draft DCO.</p>	<p>Definitions have been included in the deemed marine licences such that they can be read as standalone licences. Please see <b>draft DCO (Revision K)</b> [document reference 3.1] and the <b>Explanatory Memorandum</b></p>



ID	Location	Requirement	Comments
			<b>(Revision I)</b> [document reference 3.2],
31	3.3	<p>Guidance is publicly available from the National Archives website and should be followed by applicants. In particular applicants should:</p> <ul style="list-style-type: none"> <li>• provide footnotes in relation to statutory provisions referred to in the SI to provide the user of the SI with information about relevant amendments or extensions to, or applications of, enactments mentioned in the instrument;</li> <li>• use gender-neutral drafting (for example avoiding the use of 'he' or 'she' to refer to the Secretary of State or other persons, unless referring to a particular living individual);</li> <li>• provide an adequate preamble with recitation of powers;</li> <li>• avoid use of the words 'shall' or 'will' (because of ambiguity over whether they are an imperative or a statement of future intention);</li> <li>• avoid the word 'may' (to avoid ambiguity over whether it is permissive or stating that it is uncertain whether something is to occur);</li> <li>• avoid archaisms (for example 'therewith', 'aforesaid');</li> <li>• not use obliques in operative text (because of ambiguity whether they signify 'and' or 'or');</li> <li>• spell out 'metres', 'millimetres' etc throughout (and not use 'm', 'mm' etc); and</li> <li>• if a paragraph is included in the Interpretation Article saying that distances, directions, lengths, areas etc are approximate, make sure that in the rest of the order the word 'approximately' in conjunction with any of these dimensions does not appear.</li> </ul>	The Applicant considers it has complied with this advice so far as reasonably possible.
32	3.4	Before an application is made to the Planning Inspectorate, the draft DCO should be thoroughly checked to remove typographical errors and to ensure consistency across the whole document. These checks should also be undertaken during the Examination, whenever changes are made that affect the draft DCO.	The Applicant confirms it has undertaken these checks, including throughout the Examination, correcting any errors identified. Please see the <b>Schedule of Changes to the Revision K of the draft DCO</b>

ID	Location	Requirement	Comments
			[document reference 3.1.2].
<b>4. Protective Provisions</b>			
33	4.1	Applicants are encouraged to agree Protective Provisions with the protected party(ies) prior to submitting the application for development consent. Where agreement on Protective Provisions has not been reached during the Preapplication stage, applicants should, as a minimum, submit with their application the standard Protective Provisions for all relevant protected parties with any amendments that the Applicant is seeking annotated with full justification included within the Explanatory Memorandum.	Please see Schedule 14 of the <b>draft DCO (Revision K)</b> [document reference 3.1] and the Statutory Undertakers Position Statement .
34	4.2	<p>Where the Applicant is not proposing to include draft Protective Provisions for a Statutory Undertaker that has been identified as such by the Inspectorate (under Regulation 11 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017), the Applicant needs to ensure that the Consultation Report explains why Protective Provisions for that Statutory Undertaker are not sought or required. Ideally this information will be provided as a table listing all of the Statutory Undertakers identified by the Inspectorate with either:</p> <ul style="list-style-type: none"> <li>• a link to the proposed draft Protective Provisions; or</li> <li>• a brief explanation why the Statutory Undertaker is not affected by the application and/ or why Protective Provisions are not required.</li> </ul>	See <b>Statutory Undertaker's Position Statement (Revision E)</b> [document reference 12.46].
35	4.3	Submitting blank Protective Provisions Schedules is not acceptable and is likely to pose a serious risk to the acceptance of an application under s55 of the PA2008.	The Applicant has not submitted any blank protective provisions.
36	4.4	It is common for Protective Provisions to be drafted in unison with the protected party(ies) or by them first hand. Applicants should ensure that any Protective Provisions drafted by others appropriately align with the terminology and style of the draft DCO and are suitably drafted for use in an SI. If Protective Provisions for more than one protected party are included in a single Schedule, SI drafting requires the numbering of the paragraphs to follow sequentially throughout the Schedule and not re-start at '1' with each part (as with all textual Schedules in several parts). This approach should be adopted in the draft DCO submitted with the	The Applicant considers that the Protective Provisions included in Schedule 14 align with the terminology and style of the <b>draft DCO (Revision K)</b> [document reference 3.1] and are suitably drafted for an

ID	Location	Requirement	Comments
		application and in each amended draft submitted during the Examination where Protective Provisions are changed.	SI; but notes that paragraph numbers restart at 1 in every part of Schedule 14. The Applicant considers this position to be more clear and this approach is preceded in the East Anglia ONE North Offshore Wind Farm Order 2022 and The East Anglia TWO Offshore Wind Farm Order 2022 DCOs.
<b>5. References</b>			
37	5.1	References to Articles in the draft DCO or sections of Acts should include the heading of the provision (or other concise, explanatory wording) on the first occasion that the reference appears in each Article or each paragraph of a Schedule.	The Applicant has reviewed the draft DCO for compliance with this advice.
38	5.2	Applicants should take care to ensure that the efficacy of any cross-references used in the draft DCO are maintained and checked. These checks are particularly important if and when the draft DCO is revised during the Examination.	The Applicant has reviewed the draft DCO for compliance with this advice.
<b>6. Definitions</b>			
39	6.1	<p>Definitions should be applied consistently throughout the draft DCO and should be in lower case. Applicants should note that:</p> <ul style="list-style-type: none"> <li>terms defined in the parent legislation (ie the PA2008) or in the Interpretation Act 1978 do not need to be re-defined in the DCO;</li> </ul>	The Applicant considers that it is in overall compliance with this advice.

ID	Location	Requirement	Comments
		<ul style="list-style-type: none"> <li>• they should define, either in the relevant Article or paragraph (if only used once) or in a general definitions Article (if used more frequently), all terms not defined in the PA2008 or the Interpretation Act 1978, or where the term uses its ordinary meaning;</li> <li>• the use of different definitions for the same term within different parts of the draft DCO should be avoided wherever possible (for example setting out two different meanings of 'apparatus'). If this is unavoidable, then the definition in the Interpretation Article should make clear that it is subject to another definition elsewhere in the draft DCO;</li> <li>• generally, a definition for 'The Secretary of State' should not be provided (government departments ask for a general Secretary of State to be assumed to allow for future changes to government machinery);</li> <li>• care should be taken to ensure that the definitions provided in draft DCOs do not conflict with any of the definitions provided in s235 of the PA2008 (where there is conflict, applicants should explain and provide justification in the Explanatory Memorandum); and</li> <li>• definitions should not be used to try to make substantive provision about what can and cannot be done under a DCO, nor to try to give effect to or introduce Schedules.</li> </ul>	
40	6.2	Where there is more than one relevant planning authority (or other authority), this should be made clear in the definitions.	The Applicant considers it has complied with this advice.
<b>7. Footnotes</b>			
41	7.1	There should be clear footnotes provided for all Acts, SIs, European Union or other international legislation, or external documents referenced in a draft DCO, which must conform to the guidance on footnotes in SI practice (for legislation, the footnote should identify relevant amendments to specific provisions). This practice should apply throughout the draft DCO and its Schedules. This includes any draft Deemed Marine Licence because these also form part of an SI and must therefore meet SI standards, as mentioned above.	The Applicant considers it has complied with this advice.
42	7.2	Applicants must ensure that all footnotes in their final draft DCO submitted to an Examination are still up to date (ie legislation referred to has not been amended or repealed), and reflect the preferred practice in the relevant decision making department.	
<b>8. Schedules</b>			

ID	Location	Requirement	Comments
43	8.1	Schedules in DCOs must be given effect by an operative Article in the main body of the DCO. This may be by an express provision that the Schedule is to have effect or by clear implication (such as where the Article which grants development consent does so by reference to the Schedule which describes the Authorised Development). The Schedule should also include a shoulder reference to that operative Article, and such references should either be the first Article that mentions the Schedule, or all the Articles that mention the Schedule. A consistent approach should be adopted throughout the DCO.	The Applicant considers has complied with this advice.
44	8.2	To assist the reader in navigating the draft DCO, Schedules should be numbered according to the order they are mentioned in the substantive Articles in the draft DCO.	Save for in respect of Schedules 16 and 18, the Applicant considers it has complied with this advice.
<b>9. Paragraphs</b>			
45	9.1	Paragraphs in the draft DCO should usually consist of a single sentence and applicants should avoid the use of long sentences.	The Applicant considers it has complied with this advice as far as reasonably possible.
<b>10. Numbering</b>			
46	10.1	Numbering within Articles and Schedules should follow the guidance at National Archives. Please see advice above (paragraph 4.4) in relation to the numbering of Protective Provisions where included in draft DCO multi-part Schedules. This practice applies to all textual Schedules in several parts.	The Applicant considers it has complied with this advice, save for in respect of Schedule 14 of the <b>draft DCO (Revision K)</b> [document reference 3.1] (see ID 36).
47	10.2	Applicants should avoid the use of very long lists where the contents need to be numbered with roman numerals or lettered (for example, sub-divisions of a single numbered Work in Schedule 1, where a recent	The Applicant considers it has complied with this advice.

ID	Location	Requirement	Comments
		example extended to '(ttt)'. The SI template is unable to cope well with the formatting of such long numbering/ lettering.	
48	10.3	In the font mandated by the template for SIs, the character for the numeral 'one' and the lower case equivalent of the letter 'L' are indistinguishable from one another visually. When determining a numbering/ lettering scheme (for example, for individual land plots) which also needs to be referred to in the draft DCO, applicants should use a scheme that does not run the risk of ambiguity between these two characters.	The Applicant considers it has complied with this advice.
<b>11. Certification Articles</b>			
49	11.1	In a draft DCO certification Article, applicants should avoid referring to 'any other plans or documents referred to in this Order' since this is insufficiently clear and lacks precision.	See Schedule 18 of the <b>draft DCO (Revision K)</b> [document reference 3.1].
50	11.2	Plans and other documents which are required to be certified such as the Land Plans and Works Plans should be specifically listed in the relevant Article. Applicants should set out the titles and numbers of such documents, either in the certification Article or, if there are a large number of documents, in a separate Schedule or Schedules to the DCO.	
51	11.3	It is common for the Environmental Statement (ES) to be certified, not least because adherence with the assessment findings may be relevant when a discharging authority is considering whether or not to discharge Requirements. However, during the course of an Examination, applicants may also provide 'environmental information' which affects the findings of the ES and which may be relied upon for the purposes of the Examination required by Regulation 21 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. If during the course of an Examination 'environmental information' is provided which affects the findings in the ES then applicants should consider if this information should also form part of the certification of the ES since it may have been relied upon by the decision maker and incorporated into the Requirements as mitigation measures.	
<b>12. Preambles and explanatory notes</b>			

ID	Location	Requirement	Comments
52	12.1	Draft DCOs must include a preamble, briefly setting out details of the submission, examination and determination of the application, citing relevant statutory provisions.	See page 4 of the <b>draft DCO (Revision K)</b> [document reference 3.1].
53	12.2	Draft DCOs must also, after the Schedules, include a brief explanatory note, explaining the purpose of the DCO, and what it would permit the Applicant to do if consented. This must also set out where copies of the plans and other documents, to be certified under the DCO, may be inspected and when. The agreement reached with the document host/ venue should be confirmed to the Examination.	See page 344 of the <b>draft DCO (Revision K)</b> [document reference 3.1].
<b>Tracking changes in the draft DCO throughout the Examination</b>			
<b>13. DCO revisions</b>			
54	13.1	<p>Changes to the draft DCO may well be put forward by the Applicant and others during the course of the Examination. This may be for several reasons as follows:</p> <ul style="list-style-type: none"> <li>• responding to questions raised by the ExA;</li> <li>• responding to representations made by Interested Parties; or</li> <li>• responding to agreements reached with other Interested Parties, for example in relation to Protective Provisions or revisions to Requirements.</li> </ul>	See <b>draft DCO (Tracked) (Full Tracked Revision A/K)</b> [document reference 3.1.4], <b>draft DCO (Tracked) (Revision J/K)</b> [document reference 3.1.1] and various other track change versions submitted alongside the Revisions A to K of the DCO throughout the Examination.
55	13.2	The Examination Timetable will make provision for revised version(s) of the draft DCO to be submitted by the Applicant. Where this is not expressly required in the timetable, applicants may choose to submit revised drafts at other times during the Examination; for example to meet timetabled deadlines for the submission of Written Representations. It is important that there is a clear audit trail to identify both changes to the draft DCO made during the Examination and the reasons why those changes have been made. This will greatly	See <b>Schedule of Changes to the Revision J of the draft DCO</b> [document reference 3.1.2].



ID	Location	Requirement	Comments
		assist the Secretary of State in understanding how the form of any draft DCO that is recommended by the ExA has come about.	
<b>14. Providing a DCO audit trail</b>			
56	14.1	<p>It is important to maintain a clear audit trail of changes made to the draft DCO. To achieve this, applicants should ensure that each revised draft DCO is accompanied by:</p> <ul style="list-style-type: none"> <li>• a track changed version of the draft DCO highlighting any changes made from the previous version (and identified by a suitable filename) or a version using suitable comparite software which similarly identifies the changes;</li> <li>• a track changed draft DCO version highlighting all of the changes made from the version of the draft DCO originally submitted with the application (and identified by a suitable filename) or a version using suitable comparite software which similarly identifies the changes must be submitted at the end of the examination and, depending on the number of versions, at points during the examination; and</li> <li>• a supporting explanatory document, such as drafting notes or table of proposed changes. This should explain any amendments in a proportionate and concise way and be appropriately updated during the Examination. This is so that Interested Parties and the ExA are sufficiently aware of the purpose and effect of any proposed revisions to draft DCO provisions.</li> </ul>	See <a href="#">draft DCO (Tracked) (Full Tracked Revision A/K)</a> [document 3.1.4], <a href="#">draft DCO (Tracked) (Revision J/K)</a> and various other track changes versions submitted alongside the Revisions A to K of the DCO. See <a href="#">Schedule of Changes to the Revision K of the draft DCO</a> [document reference 3.1.2].
57	14.2	A fully updated Explanatory Memorandum must be submitted with the final version of the Applicant's draft DCO submitted towards the end of the Examination. It will therefore be necessary for applicants to keep a detailed and comprehensive audit of changes made to the draft DCO during the course of the Examination to inform the final version of the Explanatory Memorandum. It would therefore seem in the best interests of applicants to update the Explanatory Memorandum in conjunction with each update to the draft DCO during the course of the Examination. If an updated Explanatory Memorandum could be submitted with each update to the draft DCO this would seem to help everyone involved in the examination of the application. The increased clarity provided by regular updates to the Explanatory Memorandum may also reduce the number of questions posed to the Applicant and/ or challenges raised in response to suggested changes.	See <a href="#">Explanatory Memorandum (Revision I)</a> [document reference 3.2].
<b>Key issues for DCO drafting</b>			

ID	Location	Requirement	Comments
<b>15. Requirements – general considerations</b>			
58	15.1	Section 120 of the PA2008 provides that a DCO may impose Requirements in connection with the development for which consent is granted. Such Requirements may correspond with conditions which could have been imposed on the grant of any permission, consent or authorisation (for example planning permission under the Town and Country Planning Act 1990 (the TCPA1990)) which would have been required for the development if it had been consented through a different regime.	See Part 1 of Schedules 2 of the <b>draft DCO (Revision K)</b> [document reference 3.1] for the Requirements.
59	15.2	The law and policy relating to planning conditions (in particular, in England, relevant paragraphs of the National Planning Policy Framework and associated Planning Practice Guidance), imposed on planning permissions under the TCPA1990, will generally apply when considering Requirements to be imposed in a DCO in relation to the terrestrial elements of a proposed NSIP. Requirements should therefore be precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects.	The Applicant considers that the Requirements included within the <b>draft DCO (Revision K)</b> [document reference 3.1] comply with the relevant tests for planning conditions.
<b>16. Securing mitigation</b>			
60	16.1	An application may have significant adverse environmental effects that require mitigation; such effects will be identified in the accompanying ES and/ or relevant environmental information. Any mitigation measures relied upon in the ES must be robustly secured and this will generally be achieved through Requirements in the draft DCO. Mitigation that is identified in the ES as being required must also be clearly capable of being delivered.	See Part 1 of Schedules 2 and 18 of the <b>draft DCO (Revision K)</b> [document reference 3.1] for the Requirements and the list of certified documents respectively.
61	16.2	Mitigation may include adherence with control measures established through relevant management plans. Requirements can be used to secure the preparation and specification of details for such plans. The plans can be applicable to various stages in the life-cycle of the Proposed Development but may typically include: a Code of Construction Practice, a Construction Environmental Management Plan and a Site Waste Management Plan.	

ID	Location	Requirement	Comments
62	16.3	A 'Table of Mitigation' should be provided, usually as part of the ES, setting out precisely how and where mitigation measures relied upon in the ES are secured in the draft DCO.	See <b>Schedule of Mitigation (Revision B)</b> [document reference 6.5].
<b>17. Providing flexibility – approving and varying final details</b>			
63	17.3	Applicants should be aware that details fixed by the terms of the DCO can only be changed if authorised, and following adherence with the prescribed approach explained in section 153 of and Schedule 6 to the PA2008. Furthermore, it is not acceptable to circumvent the prescribed process in Schedule 6 by seeking to provide another route to approving such changes or variations, by a person other than the Secretary of State who made the DCO, for example by applying the provisions of section 73 and/ or section 96A of the TCPA1990.	No such tailpiece or wording of this kind is included in Article 3 of the <b>draft DCO (Revision K)</b> [document reference 3.1].
64	17.4	<p>Therefore, adding a tailpiece (a tailpiece is a mechanism inserted into a condition (or by analogy a Requirement) providing for its own variation) such as the one below would not be acceptable because it might allow the discharging authority to approve a change to the scope of the Authorised Development applied for and examined, thus circumventing the statutory process:</p> <p><i>“The authorised development must be carried out in accordance with the principles set out in application document [x] [within the Order limits] unless otherwise approved in writing”</i></p>	
<b>18. Complying with Environmental Impact Assessment requirements</b>			
65	18.1	A DCO should only authorise Environmental Impact Assessment (EIA) development which has been assessed in accordance with the EIA Regulations.	See Environmental Statement and Schedule 1 of the <b>draft DCO (Revision K)</b> [document reference 3.1].
<b>19. Discharging Requirements</b>			

ID	Location	Requirement	Comments
66	19.1	Section 120(2)(b) of the PA2008 allows for Requirements to include the obtaining of approvals from the Secretary of State 'or any other person'. In many cases, the relevant planning authority for the area(s) within which the development is situated, is likely to be the relevant 'person' from which to obtain such approvals. For clarity, such Requirements should generally be drafted to identify the relevant planning authority or authorities by name. This could be made clear in the definitions, for example when defining the 'relevant planning authority'.	This is not applicable for this DCO given there are multiple local planning authorities who will be providing approvals. Where relevant, reference to specific local planning authorities have been provided.
<b>22. Hedgerows and trees</b>			
67	22.1	Applicants may wish to include an Article within the draft DCO to allow the removal of hedgerows (if necessary) for the purposes of carrying out the Authorised Development. The draft DCO can include an Article with powers which remove the obligation on the Undertaker to first secure consent under The Hedgerows Regulations 1997. (In Wales, such a power can only be included with the consent of Natural Resources Wales.) It is recommended that DCO Articles of this kind are made relevant to the specific hedgerows intended for removal. To support the ExA, the Article should include a Schedule and a plan to specifically identify the hedgerows to be removed (whether in whole or in part). This will allow the question of their removal to be examined in detail. Alternatively, the Article within the DCO could be drafted to include powers for general removal of hedgerows (if they cannot be specifically identified) but this must be subject to the later consent of the local authority.	See Article 34 of the <b>draft DCO (Revision K)</b> [document reference 3.1].
68	22.2	Applicants may also wish to include powers allowing them to fell, lop or cut back roots of trees subject to a Tree Preservation Order (TPO). This power can extend to trees which are otherwise protected by virtue of being situated in a conservation area. To support the ExA inclusion of this power should be accompanied by a Schedule and plan to specifically identify the affected trees.	
69	22.3	Trees subject to TPO and/ or are otherwise protected (and likely to be affected) should be specifically identified. It is not appropriate for this power to be included on a precautionary basis. Proper identification of affected trees will enable the ExA to give full consideration to the particular characteristics that gave rise to their designation and the desirability of continuing such protection.	See Article 35 of the <b>draft DCO (Revision K)</b> [document reference 3.1] and the <b>Tree Preservation Order</b>

ID	Location	Requirement	Comments
			and Hedgerow Plan (Revision C) [document reference 2.12].
<b>23. Extinguishment of private rights over land</b>			
70	23.1	Sub-sections 120(3) and (4) of and paragraph 2 of Schedule 5 to the PA2008 allow a DCO to make provision for the extinguishment of rights over land.	See Article 21 of the <b>draft DCO (Revision K)</b> [document reference 3.1].
71	23.2	An applicant may wish to extinguish private rights over land when it is acquiring land by the use of a Compulsory Acquisition power in the draft DCO or by agreement with the landowner. An applicant may also wish to extinguish private rights over land it already owns or land which is otherwise required for the NSIP.	
72	23.3	The Land Plan accompanying the application must identify any land over which it is proposed to exercise powers of Compulsory Acquisition including any land in relation to which it is proposed to extinguish private rights (Regulation 5 of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009).	See the <b>Land Plans (Revision E)</b> [document reference 2.3].
73	23.4	Where an applicant is seeking powers in the DCO to acquire land compulsorily, the drafting of the Article containing the powers should make it clear whether or not the Applicant is also seeking a power to clear the title of the land of all private rights. The Applicant should consider whether the Article should be subject to a power under a separate Article which would allow the Applicant to exclude a particular private right from the blanket extinguishment power.	See Article 21 of the <b>draft DCO (Revision K)</b> [document reference 3.1].
<b>24. Restrictive Covenants</b>			
74	24.1	It may be appropriate to include a power to impose Restrictive Covenants over part of the land which is subject to Compulsory Acquisition or use under the DCO. Before deciding whether or not the power is justified the Secretary of State will need to consider issues such as proportionality, the risk that the use of land above or below a structure could be sterilised if it has to be acquired outright in the absence of a power to impose Restrictive Covenants or whether there is for example a policy of establishing a continuous	See the <b>Statement of Reasons (Revision E)</b> [document reference 4.3].

ID	Location	Requirement	Comments
		protection zone for the infrastructure network which could be secured more efficiently with the benefit of this power (this was the case in the Docklands Light Railway Orders).	
75	24.2	The power to impose Restrictive Covenants over land above a buried cable or pipe, or where a slope contains artificial reinforcement, has been granted in DCOs (Article 22 of the Silvertown Tunnel Order (2018)).	
76	24.3	In order to enable the Secretary of State to consider whether the imposition of Restrictive Covenants is necessary for the purposes of implementing a DCO, and appropriate in human rights terms, applicants should be prepared to fully explain and justify the need for including such powers in the Statement of Reasons. DCO provisions seeking to impose Restrictive Covenants should not be broadly drafted and should identify the land to which they relate and the nature of the Restrictive Covenant.	
<b>25. Application, modification or exclusion of statutory provisions</b>			
77	25.1	Under section 120(5)(a) of the PA2008 DCOs may apply, modify or exclude an existing statutory provision which relates to any matter for which provision may be made in the DCO.	See Article 6 of the <b>draft DCO (Revision K)</b> [document reference 3.1].
78	25.2	The power to apply, modify or exclude an existing statutory provision should be set out in an Article in the main body of the draft DCO. Those provisions that are proposed to be applied, modified or excluded by a DCO should be clearly identified, and, if extensive, identified in a Schedule or Schedules.	
79	25.3	In this context, applicants should also be aware of the opportunities and restrictions (see The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015) under section 150 of the PA2008 on removing consent requirements.	
<b>DCOs and Deemed Marine Licences</b>			
<b>26. Geographical scope</b>			

ID	Location	Requirement	Comments
80	26.1	A DCO may 'deem' consent for a Marine Licence under Part 4 of the Marine and Coastal Access Act 2009 (MCAA2009), subject to specified conditions (sub-section 120(4), paragraph 30A of Schedule 5 and section 149A of the PA2008).	See Schedules 10 to 13 of the <b>draft DCO (Revision K)</b> [document reference 3.1].
81	26.2	This power only applies where the activity is to be carried out wholly in one or more of the following: in England; in waters adjacent to England up to the seaward limits of the territorial sea (twelve miles offshore); in a Renewable Energy Zone; and/ or in an area designated under section 1(7) of the Continental Shelf Act 1964, except where the Scottish Ministers have functions.	
<b>27. Multiple Deemed Marine Licences</b>			
82	27.1	It is considered that there is nothing in the relevant legislation which would prevent a DCO deeming more than one Deemed Marine Licence. This could be advantageous in particular developments, where there may be severable elements to the overall development project.	The generation assets for SEP and DEP are covered by the deemed marine licences in Schedules 10 and 11 and the transmission assets for SEP and DEP are covered by the deemed marine licences in Schedules 12 and 13 of the <b>draft DCO (Revision K)</b> [document reference 3.1].
83	27.2	If an applicant proposes that a draft DCO should include more than one Deemed Marine Licence, then they will need to give careful consideration as to how the respective elements of the proposed NSIP are allocated between the draft licences, for example applicable conditions. This is so as to ensure all elements of the NSIP in the marine environment for which development consent is sought are included in one or other of the draft licences, the split between those elements is clearly described in the licences and they are consistent with the authorised NSIP as set out in the DCO. If possible the approach taken should be agreed sufficiently early with the Marine Management Organisation.	
<b>28. Transfer provisions</b>			
84	28.1	Section 156 of the PA2008 provides that a DCO has effect for the benefit of the land and all persons for the time being interested in the land; although this is subject to any contrary provision made in a DCO.	See Article 5 of the <b>draft DCO (Revision K)</b> [document reference 3.1].
85	28.2	DCOs usually include an Article setting out who enjoys the benefit of the DCO and terms for the transfer of the benefit of any or all of the provisions of the DCO, including any consent that may be required.	

ID	Location	Requirement	Comments
86	28.3	Sub-section 72(7) of the MCAA2009 provides that, on application by the licensee, the licensing authority which granted (or is deemed to have granted) a Deemed Marine Licence may transfer it from the licensee to another person. Whilst this provision does not expressly allow only part of a Deemed Marine Licence to be transferred, sub-section 120(5) (a) of the PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in a DCO, which would include this provision. It is therefore considered that there is no legal reason to prevent a DCO from allowing part of a Deemed Marine Licence to be transferred, although there may be operational difficulties with such an approach including monitoring compliance and taking enforcement action.	
<b>29. Conditions</b>			
87	29.1	Sub-section 71(1)(b) of the MCAA2009 allows a Deemed Marine Licence to be granted subject to such Conditions as the licensing authority thinks fit. These may, under sub-section 71(2), relate to the activities authorised by the licence and precautions to be taken or works to be carried out (whether before, during or after the carrying out of the authorised activities) in connection with or in consequence of those activities. Sub-section 71(3) sets out six matters that may in particular be dealt with by conditions.	Conditions are included within Part 2 of Schedules 10-13 of the <b>draft DCO (Revision K)</b> [document reference 3.1].
88	29.2	Whilst the law and policy relating to planning conditions does not necessarily apply to DCO Requirements relating to the offshore elements of an NSIP or to Deemed Marine Licence conditions, it is considered that similar principles should apply when drafting these (see paragraph 15.2).	