



ESTUARIES

OFFSHORE WIND FARM

FIVE ESTUARIES

OFFSHORE WIND FARM

STATUTORY NUISANCE STATEMENT

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DEFINITION OF ACRONYMS

Term	Definition
CoCP	Code of Construction Practice
DCO	Development Consent Order
ES	Environmental Statement
ECC	Export Cable Corridor
EPA	Environmental Protection Act 1990
VE	Five Estuaries Offshore Wind Farm
VE OWFL	Five Estuaries Offshore Wind Farm Ltd
Galloper	Galloper Offshore Wind Farm
MW	Megawatts
NSIP	Nationally Significant Infrastructure Project
Secretary of State	Secretary of State for Energy Security and Net Zero



1 EXECUTIVE SUMMARY

- 1.1.1 This Statement has been prepared to comply with Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations), which provides that any application for a development consent order (DCO) should be accompanied by a statement setting out whether the proposal could engage the statutory nuisance provisions of section 79(1) of the Environmental Protection Act 1990 (EPA). If such a nuisance could occur, the statement must set out how the Applicant proposes to mitigate or limit the effects.
- 1.1.2 This Statement provides an explanation of matters set out in section 79(1) of the Environmental Protection Act 1990 (EPA 1990) in respect of potential statutory nuisances, the potential implications of the Project in this regard and proposals for mitigating or limiting any such potential statutory nuisances identified.



2 INTRODUCTION

2.1 BACKGROUND

- 2.1.1 Five Estuaries Offshore Wind Farm Limited (the Applicant) has submitted an application to the Planning Inspectorate on behalf of the Secretary of State, for a development consent order for the Five Estuaries Offshore Wind Farm (the Project) under section 37 of the Planning Act 2008 (the 2008 Act).
- 2.1.2 The Project is the proposed extension to the operational Galloper Offshore Wind Farm. The project includes provision for the construction, operation, maintenance and decommissioning of an offshore wind farm located approximately 37 kilometres off the coast of Suffolk at its closest point in the southern North Sea.
- 2.1.3 The Project includes up to 79 wind turbine generators and associated infrastructure making landfall at Sandy Point between Frinton-on-Sea and Holland-on-Sea in Essex, the installation of underground cables, and the construction of an electrical substation and associated infrastructure near to the existing Lawford Substation to the west of Little Bromley in order to connect the development to National Grid's proposed East Anglia Connection Node substation, which would be located nearby. All onshore connection infrastructure would be located in the administrative area of Tendring District Council, within Essex County Council.
- 2.1.4 The Project will have an overall capacity of greater than 100 megawatts (MW) and therefore constitutes a nationally significant infrastructure project (NSIP) under section 14(1)(a) and 15(3) of the 2008 Act.

2.2 LEGISLATIVE AND POLICY CONTEXT

- 2.2.1 Section 79(1) of the EPA identifies the matters which could constitute statutory nuisance as follows:-

- (a) any premises in such a state as to be prejudicial to health or a nuisance;*
- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;*
- (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;*
- (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;*
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;*
- (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;*
- (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;*
- (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;*
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;*
- (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road; and*
- (h) any other matter declared by any enactment to be statutory nuisance;*



and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.

- 2.2.2 Paragraph (h) of section 79(1) of the EPA incorporates any statutory nuisances contained in other legislation. No such legislation is relevant to the Project.
- 2.2.3 Section 79 of the EPA further contains exceptions in respect of statutory nuisance. The particular exceptions of relevance to the Project are:
- subsection 79(1)(c) (fumes or gases emitted from premises) does not apply in relation to premises other than private dwellings (section 79(4) of the EPA); and
 - subsection 79(1)(ga) above does not apply to noise made by traffic (section 79(6A)(a) of the EPA).
- 2.2.4 Section 79(7) of the EPA provides definitions of various terms for the purposes of the categories of statutory nuisance. Of potential relevance to the Project are the following definitions:-
- ‘Dust’ does not include dust emitted from a chimney as an ingredient of smoke;
 - ‘Fumes’ means any airborne solid matter smaller than dust;
 - ‘Gas’ includes vapour and moisture precipitated from vapour;
 - ‘Industrial, trade or business premises’ means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;
 - ‘Noise’ includes vibration;
 - ‘Prejudicial to health’ means injurious, or likely to cause injury, to health;
 - ‘Premises’ includes land;
 - ‘Private dwelling’ means any building, or part of a building, used or intended to be used, as a dwelling; and
 - ‘Street’ means a highway and any other road, footway, square or court that is for the time being open to the public.
- 2.2.5 Section 158 of the 2008 Act provides statutory authority for carrying out development or doing any other act pursuant to a DCO such that it creates a defence to civil or criminal proceedings for nuisance brought by a local authority.



- 2.2.6 Whilst it is not anticipated that the construction, operation or decommissioning of the DCO Proposed Development would cause a statutory nuisance, Article 9 of the draft DCO (Application Document 3.1) which accompanies the Application contains a provision that would provide a defence to proceedings in respect of statutory nuisance. This article provides a defence to proceedings brought in a magistrates' court under section 82(1) of the Environmental Protection Act 1990 in relation to certain nuisances set out in paragraph 79(1) of that Act. This is necessary because section 158 does not extend to the relatively rare situation by which if, somebody considers that the local authority ought to be tackling a nuisance using its statutory nuisance powers, but it is not, that person may apply to the magistrates' court under section 82 of the Environmental Protection Act 1990. Accordingly, this article is seeking to fill in a legislative gap by extending the effect of section 158.
- 2.2.7 The Overarching National Policy Statement for Energy (EN-1) makes further provision in relation to statutory nuisance in the context of applications for development consent under the 2008 Act, as follows:-

4.15 Common Law Nuisance and Statutory Nuisance

4.15.1 Section 158 of the Planning Act 2008 confers statutory authority for carrying out development consented to by, or doing anything else authorised by, a Development Consent Order.

4.15.2 Such authority is conferred only for the purpose of providing a defence in any civil or criminal proceedings for nuisance. This would include a defence for proceedings for nuisance under Part III of the Environmental Protection Act 1990 (EPA) (statutory nuisance) but only to the extent that the nuisance is the inevitable consequence of what has been authorised.

4.15.3 The defence does not extinguish the local authority's duties under Part III of the EPA 1990 to inspect its area and take reasonable steps to investigate complaints of statutory nuisance and to serve an abatement notice where satisfied of its existence, likely occurrence or recurrence.

4.15.4 The defence is not intended to extend to proceedings where the matter is "prejudicial to health" and not a nuisance.

Applicant Assessment

4.15.5 At the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the EPA 1990 and how they may be mitigated or limited should be identified by the applicant so that appropriate requirements can be included in any subsequent order granting development consent (see Section 5.7 on dust, odour, artificial light etc. and Section 5.12 on noise and vibration).

Secretary of State decision making

4.15.6 At the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the EPA 1990 and how they may be mitigated or limited should be considered by the Secretary of State so that appropriate requirements can be included in any subsequent order granting development consent (see Section 5.7 on dust, odour, artificial light etc. and Section 5.12 on noise and vibration).



4.15.7 The Secretary of State should note that the defence of statutory authority is subject to any contrary provision made by the Secretary of State in any particular case in a Development Consent Order (section 158(3) of the Planning Act 2008). Therefore, subject to Section 5.7 and Section 5.12, the Secretary of State can disapply the defence of statutory authority, in whole or in part, in any particular case, but in so doing should have regard to whether any particular nuisance is an inevitable consequence of the development.



3 PURPOSE OF THIS DOCUMENT

- 3.1.1 This Statement has been prepared to comply with Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations), which provides that any application for a development consent order (DCO) should be accompanied by a statement setting out whether the proposal could cause a statutory nuisance pursuant to section 79(1) EPA, and with the policy requirements set out in EN-1. If such a nuisance could occur, the statement must set out how the applicant proposes to mitigate or limit the effects.
- 3.1.2 This Statement provides an explanation of matters set out in section 79(1) of the EPA in respect of statutory nuisances, the potential implications of the Scheme, and proposals for mitigating or limiting any such potential statutory nuisances identified.



4 IDENTIFICATION AND ASSESSMENT OF STATUTORY NUISANCE

4.1.1 The Environmental Statement for the Project considers the likelihood of significant effects arising. The ES provides an assessment of the potential effects on receptors as negligible, minor, moderate or major. Moderate and major effects are generally considered to be significant for the purposes of the EIA. While there are no such systematic criteria for defining statutory nuisance, for the purposes of this statement, it has been considered that effects which are not significant in EIA terms are extremely unlikely to be of a level which could constitute statutory nuisance. Accordingly, the EIA conclusions have been used to assist in identifying any risk of statutory nuisance for this statement.

4.1.2 The categories of statutory nuisance that could be engaged in respect of the Project are:-

(d) Any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;

(fb) Artificial light emitted from premises so as to be prejudicial to health or a nuisance;

(g) Noise emitted from premises so as to be prejudicial to health or a nuisance; and

(ga) Noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street.

4.1.3 The construction elements of the Project which have the potential to engage a statutory nuisance under the EPA are as follows:-

- > Site preparatory works, site investigation activities
- > Construction works for the landfall, transition joint bays and associated onshore works for the connection of the offshore transmission cables
- > Construction works for the onshore cable corridor, joint bays, link boxes
- > Temporary construction accesses and highway crossing points, off route haul roads, temporary construction compounds, compounds for trenchless crossings, cable stringing out areas and soil storage areas,
- > Construction of the onshore substation and associated operational access, including road improvements and widening, including Bentley Road
- > Installation of permanent landscaping and habitat measures

4.1.4 The only operational element of the Project which has the potential to engage a statutory nuisance under the EPA is the operation of the onshore substation.

4.2 MATTERS NOT TAKEN FORWARD FOR FURTHER ASSESSMENT

4.2.1 S79 (1) (a) Any premises in such a state as to be prejudicial to health or a nuisance.

4.2.2 No premises are expected to be left in a state to be prejudicial to health or a nuisance as a result of the Project. This matter is not considered further within this statement.

4.2.3 S79(1)(b) Smoke emitted from premises so as to be prejudicial to health or a nuisance

4.2.4 No smoke will be generated during normal operation of the Project. This matter is not considered further within this Statement.

4.2.5 S79(1) (e) Any accumulation or deposit which is prejudicial to health or a nuisance.



- 4.2.6 The Land and Soils assessment did not identify any likely significant effects for human receptors
- 4.2.7 S79(1) (f) Any animal kept in such a place or manner as to be prejudicial to health or a nuisance.
- 4.2.8 No animals will be kept as part of the Project. This matter is therefore not considered further in this Statement.
- 4.2.9 S79(1) fa) Any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance.
- 4.2.10 The nature of the Project provides no reason why insects will attracted to it or otherwise be caused to emanate from its premises. This matter is therefore not considered further in this Statement.



5 POTENTIAL STATUTORY NUISANCES UNDER SECTION 79(1) OF THE EPA

5.1 SECTION 79(1)(D) – RELATING TO DUST, STEAM, SMELL OR OTHER EFFLUVIA

5.1.1 Potential air quality impacts have been considered within Chapter 10: Air Quality of the environmental statement (Volume 6, Part 3, Chapter 10). This assessment considers impacts throughout all phases of development, including construction, Operation and Maintenance (O&M) and decommissioning phase.

The assessment has considered impacts that could lead to potential significant air quality effects arising from:

- emissions of air pollutants and dust from temporary construction activities;
- emissions of air pollutants from VE generated road traffic;
- emissions of air pollutants from Non-Road Mobile Machinery (NRMM) on site; and
- emissions of air pollutants from offshore activities on onshore receptors.

Based on the outcomes of the assessment, a series of measures are to be implemented in order to prevent, reduce or offset any significant adverse effects.

Construction air quality mitigation

Section 4.4 of the Code of Construction Practice (Application Document 9.21) provides specific mitigation measures which will be applied to minimise air quality impacts associated with construction activities. These principally relate to the suppression of dust generated from construction activities, and controlling emissions from NRMM.

5.1.2 Implementation of the air quality controls included in the Code of Construction Practice is secured through requirement 8 (Code of construction practice) of the draft development consent order (Application Document 3.1).

Operational air quality mitigation

5.1.3 Operational activities will be minimal and infrequent; these are unlikely to cause an air quality impact.

5.1.4 NRMM may be used during the O&M phase. NRMM will be operated in accordance with the controls measures outlined within Department for Environment Food and Rural Affairs (Defra) Local Air Quality Management 2022 (LAQM.TG(22)) guidance. These measures represent standard practice and are included within the Code of Construction Practice for reference.

As such, Chapter 10: Air Quality of the environmental statement (Volume 6, Part 3, Chapter 10) concludes that the operational stage of the Project will not give rise to any significant air quality effects.



5.2 SECTION 79(1)(FB) – RELATING TO ARTIFICIAL LIGHT

The potential impacts and mitigation in respect of this category of statutory nuisance have been assessed as part of Chapter 2: Landscape and Visual Impact Assessment of the environmental statement (Volume 6, Part 3, Chapter 2) which considers the impacts that could lead to potential significant artificial lighting effects arising from:

- artificial lighting of construction works, especially during the winter months and for activities which require continuous working during night time; and
- artificial lighting of onshore substation

5.2.1 Chapter 2: Landscape and visual impact assessment of the environmental statement (Volume 6, Part 3, Chapter 2) concludes that through the implementation of mitigation measures proposed in the Code of Construction Practice (Application Document 9.21) with respect to artificial lighting. On that basis it is not expected that the Project would give rise to a statutory nuisance under section 79(1)(fb).

Construction lighting mitigation

5.2.0 Section 3.9 of the Code of Construction Practice (Application Document 9.21) provides specific mitigation measures which will be applied in respect of artificial lighting.

5.2.1 Where dark hours lighting is required, the lighting will be designed to minimise light spillage as far as possible, while providing the necessary levels of light for safety requirements. While a lower level of lighting would remain overnight for security purposes, this would be motion activated.

5.2.2 The limited occurrence of dark hours lighting combined with the measures to reduce its impact on the occasions it may be required and the low levels of security lighting mean that its effect on visual receptors will be especially limited and therefore potential effects have been scoped out of the detailed assessment

5.2.3 Compliance with the artificial lighting mitigation measures included in the Code of Construction Practice is secured through requirement 8 (Code of construction practice) of the draft development consent order (Application Document 3.1).

Operational lighting mitigation

5.2.4 Chapter 2: Landscape and visual impact assessment of the environmental statement (Volume 6, Part 3, Chapter 2) concludes that although there will be lighting associated with the onshore substation during the operational phase, this will be limited in extent and usage, and of a low intensity such that it will not give rise to any likely significant effects.

5.2.5 Requirement 5 (Substation works) of the draft development consent order (Application Document 3.2) requires that details of operational lighting, which should be in accordance with the onshore substation design principles document (Application Document 9.4, section 4.6) are provided to the relevant planning authority for approval in advance of construction of that works.



5.3 SECTION 79(1)(G) AND (GA) – RELATING TO NOISE AND VIBRATION

5.3.1 The potential impacts and mitigation in respect of this category of statutory nuisance have been assessed as part of Chapter 9: Airborne noise and vibration of the environmental statement (Volume 6, Part 3, Chapter 9), which considers the impacts that could lead to potential significant noise and vibration effects arising from:

- noise and vibration during the construction of the landfill;
- noise and vibration during the construction of the onshore export cable corridor;
- noise and vibration during the construction of the onshore substation;
- noise and vibration during the road improvements to the A120 Junction and Bentley Road;
- noise from construction vehicles using the road network; and
- noise from the operation of the onshore substation.

5.3.2 Chapter 9: Airborne noise and vibration of the environmental statement (Volume 6, Part 3, Chapter 9) concludes that through the implementation of mitigation measures proposed in the Code of Construction Practice (Application Document 9.21) with respect to noise and vibration, there will not be any significant noise and vibration emissions. On that basis it is not expected that the Project would give rise to a statutory nuisance under section 79(1)(g) and (ga).

Construction noise and vibration mitigation

5.3.3 Section 4.3 and Appendix F of the Code of Construction Practice (Application Document 9.21) provides specific mitigation measures which will be applied in respect of noise. Further, Section 3.2 of the Code of Construction Practice (Application Document 9.21) provides for restrictions on construction working hours.

5.3.4 Construction works will be undertaken in accordance with best practicable means (as defined in section 72 of the Control of Pollution Act 1974) to minimise noise and vibration effects.

5.3.5 Compliance with the noise and vibration mitigation measures included in the Code of Construction Practice is secured through requirement 8 (Code of construction practice) of the draft development consent order (Application Document 3.1).

5.3.6 A temporary speed limit reduction to 40mph along Bentley Road is sought under Part 4 of Schedule 4 of the draft development consent order (Application Document 3.1).

Operational noise and vibration mitigation

5.3.7 Operational noise from the onshore substation has the potential, cumulatively with operational noise from the onshore substation forming part of the proposed North Falls Offshore Wind Farm and the East Anglia Connection Node substation forming part of the Norwich to Tilbury project, to have significant effects at numerous noise sensitive receptors.

5.3.8 Requirement 17 (Control of noise during the operational stage) of the draft development consent order (Application Document 3.2) provides a noise rating level for the standard operation of the onshore substation which cannot be exceeded.



6 DRAFT DEVELOPMENT CONSENT ORDER

- 6.1.1 Article 9 of the draft development consent order (Application Document 3.1) provides a defence to proceedings in respect of statutory nuisance brought under s82 of the EPA only. The defence applies to statutory nuisance that falls under subsections (1)(d), (fb), (g) and (ga) of section 79(1) of the EPA.
- 6.1.2 The defence will apply if one of the following scenarios applies:
- > If the nuisance relates to premises used by the Applicant for or in connection with the construction or maintenance of the Project and the nuisance is attributable to the carrying out of the Project in accordance with a notice served under section 60 of the Control of Pollution Act 1974 or consent given under section 61 of the Control of Pollution Act 1974.
 - > The nuisance is a consequence of the construction or maintenance of the Project and it cannot reasonably be avoided.
 - > The nuisance relates to premises used by the Applicant for the purposes of or in connection with the use of the Project and that the nuisance is attributable to the use of the Project which is being used in compliance with requirement 17 (Control of noise during the operational stage) of the draft development consent order (Application Document 3.1).
 - > The nuisance is a consequence of the use or operation of the Project and it cannot reasonably be avoided.
- 6.1.3 Under article 9(2) of the draft development consent order (Application Document 3.1), compliance with the controls and measures relating to noise, vibration, dust or artificial lighting in the Code of Construction Practice (Application Document 9.21) will be sufficient (but not necessary) to show that any alleged nuisance could not reasonably be avoided.



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