



NORTH FALLS

Offshore Wind Farm

Explanatory Memorandum

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GLOSSARY

“1990 ACT”	THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
“2008 Act”	The Planning Act 2008 which is the legislation in relation to applications for NSIPs, including pre-application consultation and publicity, the examination of applications and decision making by the Secretary of State.
“2009 Act”	The Marine and Coastal Access Act 2009
“Ancillary Works”	Means the ancillary works described in Part 2 of Schedule 1 of the Order.
“APFP Regulations”	The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. Sets out detailed procedures that must be followed for submitting and publicising applications for Nationally Significant Infrastructure Projects.
“Applicant”	North Falls Offshore Wind Farm Limited
“Application”	The Application for a Development Consent Order made to the Secretary of State under Section 37 of the Planning Act 2008 in respect of the Authorised Development, required pursuant to Section 31 of the Planning Act 2008 because the Authorised Development is a Nationally Significant Infrastructure Project under Section 14(1)(a) and Section 15 of the Planning Act 2008 by virtue of being an offshore generating station in England or Wales of 100 Megawatts electrical capacity or more.

“Associated Development”	Defined under S.115(2) of The Planning Act 2008 as development which is associated with the principal development and that has a direct relationship with it. Associated development should either support the construction or operation of the principal development or help address its impacts. It should not be an aim in itself but should be subordinate to the principal development.
“Authorised Development”	The development to which the Application relates and refers to the development which requires a DCO and all Associated Development and Ancillary Works.
“Book of Reference”	A reference document providing details of all land ownership interests within the Order Limits and linked to the Land Plans.
“Connection works”	Means Work Nos 4B to 14 described in Part 1 of Schedule 1 of the Order. It also includes related further associated development in connection with those works.
“DCO”	A Development Consent Order made by the relevant Secretary of State pursuant to the Planning Act 2008 to authorise a NSIP. A DCO does or can incorporate or remove the need for a range of consents which would otherwise be required for a development. A DCO can also include powers of compulsory acquisition.
“EIA”	Environmental Impact Assessment. The assessment of the likely significant environmental effects of a development undertaken in accordance with the EIA Regulations.
“EIA Regulations”	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 setting out how the EIA of Nationally Significant Infrastructure Projects must be carried out and the procedures that must be followed.
“ES”	The Environmental Statement documenting the findings of the EIA.

“Explanatory Memorandum”	This document – it explains the intended purpose and effect of a DCO and the authorisations and powers that it seeks.
“Five Estuaries”	Means Five Estuaries Offshore Wind Farm
“Land Plan(s)”	A plan showing all of the land that is required for the Authorised Development and / or over which rights are to be sought as part of the DCO.
“MHWS”	Mean high water springs or the highest level which spring tides reach on average over a period of time.
“MLWS”	Mean low water springs or the lowest level which spring tides reach on average over a period of time.
“MMO”	The Marine Management Organisation.
“NSIP”	A Nationally Significant Infrastructure Project that must be authorised by the making of a DCO under 2008 Act.
“Order”	The North Falls Offshore Wind Farm Order, being the DCO that would be made by the Secretary of State authorising the Authorised Development, a draft of which has been submitted as part of the Application.
“Order Limits”	The limits of the land to which the Application for the DCO relates and shown on the offshore Order limits and grid coordinates plan and the onshore Order limits plan within which the Authorised Development must be carried out and which is required for its construction and operation.
“PINS”	The Planning Inspectorate. A Government agency responsible for receiving and administering the acceptance and examination of applications for NSIPs on behalf of the Secretary of State.
“Relevant Planning Authorities”	Means the Essex County Council and Tendring District Council

“Requirements”	The 'requirements' at Schedule 1, Part 3 to the draft Order that, amongst other matters, are intended to control the final details of the Authorised Development as to be constructed and also to control its operation, amongst other matters to ensure that it accords with the EIA and does not result in unacceptable impacts.
“SoS”	The Secretary of State. The decision maker for DCO applications and head of a Government department. In this case the SoS for the Department for Energy Security and Net Zero.
“Statement of Reasons”	A statement setting out the reasons and justification for the compulsory acquisition of land or rights in land within the Order Limits.
“Undertaker”	Means the Applicant or such other person who takes benefit of the DCO following the procedure within Article 5 of the Order.
“Works Plans”	Plans showing the numbered works referred to at Schedule 1 to the Order and submitted with the Application.
The definitions included in Article 2 of the Order apply to the terminology used in this document. Where a specific term is not defined in this glossary the reader should refer to this Article.	

1. INTRODUCTION

1.1 Overview

- 1.1.1 This Explanatory Memorandum has been prepared on behalf of North Falls Offshore Wind Farm Limited (the '**Applicant**'). It forms part of the application (the '**Application**') for a Development Consent Order (a '**DCO**' or the '**Order**'), that has been submitted to the Secretary of State (the '**SoS**') for Energy Security and Net Zero, under section 37 of the Planning Act 2008 (the '**2008 Act**').
- 1.1.2 In February 2017, the Crown Estate launched an opportunity for existing wind farms to apply for project extensions. The Applicant applied for a lease to develop an extension to the western boundary of the existing Greater Gabbard Offshore Wind Farm. The Applicant was awarded an Agreement for Lease by the Crown Estate in August 2019 for Greater Gabbard Extension (now North Falls Offshore Wind Farm), which was signed in September 2020.
- 1.1.3 The Applicant is seeking development consent to authorise the construction, operation and maintenance of up to 57 wind turbine generators ('**WTG**'); up to two offshore substation platforms ('**OSP**') or up to one OSP and up to one offshore converter platform ('**OCP**'); array cables which link the WTGs with each other and the OSP(s)/OCP; platform interconnector cables linking the OSP(s)/OCP; export cables between the OSP(s) and landfall; onshore export cables from landfall connecting to an onshore substation; and a connection to a National Grid connection point (the '**Authorised Development**'). The Authorised Development has retained optionality to connect to the National Grid at either an offshore connection or to an onshore National Grid substation via a cable route connecting within the Tendring peninsula of Essex. The Authorised Development array area is approximately 95km², and will be located approximately 40km of the East Anglian coastline in the southern North Sea.

- 1.1.4 A DCO is required for the Authorised Development as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (a 'NSIP') under sections 14 and 15(3) of the 2008 Act.
- 1.1.5 The DCO, if made by the SoS, would be known as the North Falls Offshore Wind Farm Order (the "Order").

1.2 North Falls Offshore Wind Farm Limited

- 1.2.1 North Falls Offshore Wind Farm Limited is a consortium between SSE Renewables and RWE Renewables, both of which are experienced developers committed to developing renewable energy in the UK. Further details on the corporate structure between SSE Renewables, RWE Renewables and the Applicant is included in the Funding Statement (Document Reference: 6.4).
- 1.2.2 SSE Renewables is a leading developer, owner, and operator of renewable energy across the UK and Ireland, with a portfolio of around 4 GW of onshore wind, offshore wind and hydro generation. Part of the SSER strategy is to drive the transition to a net zero future through the world class development, construction, and operation of renewable energy assets.
- 1.2.3 RWE is one of the world's leading renewable energy companies. It has one of the largest portfolios of offshore wind farms, photovoltaic plants and battery storage facilities in the world, with a combined pro-rata capacity of approximately 9GW. RWE commissioned the UK's first commercial-scale offshore wind farm in 2004, and now owns 10 operational offshore wind farms in the UK with a total installed capacity of 3.86GW. SSER has successfully installed 2.5 GW of offshore wind capacity in the UK including the Greater Gabbard, Beatrice, Seagreen, and with Dogger Bank A, Dogger Bank B, and Dogger Bank C Offshore Wind Farms in construction. Both SSER and RWE (alone or as part of a developer consortium) have recently consented or are in the process of consenting a range of other offshore wind farms including:

- Five Estuaries off the east coast of England;
- Dogger Bank South offshore wind farms, off the north east coast of England;
- Berwick Bank offshore wind farm off the east coast of Scotland;
- Ossian offshore wind farm off the east coast of Scotland; and
- Dogger Bank D offshore wind farm, off the north east coast of England.

1.2.4 This provides the Applicant with valuable experience from consenting, constructing, and operating offshore wind farms, experience which have been used to inform the design of the Authorised Development. It also provides a sound understanding of the potential impacts of the Authorised Development through the ability to draw on available monitoring data.

1.3 The Order Limits

1.3.1 The Authorised Development will be constructed, operated and maintained within the Order Limits. The Order Limits comprise of the following areas:

- Offshore wind farm array area: This is where the offshore wind farm will be located, which will include the wind turbines, array cables, and up to two offshore substation platforms (for an onshore connection), or up to one offshore substation platform and one offshore converter station platform (for an offshore connection), and in each case along with associated platform interconnector cables between the platforms and for the onshore connection, project export cables. This area is approximately 95km² and will be located approximately 40km off the East Anglia coast;
- Offshore export cable corridor: If onshore connection to the National Grid is undertaken, this is where the permanent offshore export cable will be located. If an onshore connection is utilised, the corridor will extend from

the south-west boundary of the North Falls Offshore array area in a westerly direction to the Tendring Peninsula; and

- Onshore order limits: This is where the permanent onshore electrical infrastructure including onshore export cables, onshore substation and connection to the National Grid will be located.

1.3.2 Taken together these areas form the Order Limits and are shown on the Works Plans (Onshore) and Works Plans (Offshore) (Document References: 5.6 and 5.7).

1.4 The Authorised Development

1.4.1 The main components of the Authorised Development are summarised below:

- Work No.1 consists of a nationally significant infrastructure project, being the offshore wind turbine generating station comprising up to 57 wind turbine generators and a network of cables between the wind turbine generators and Work No. 2.
- The description of Work No.1 refers to the wind generating station having a gross electrical output of over 100 megawatts. This is consistent with sections 14 and 15 of the 2008 Act which stipulates that an offshore windfarm which exceeds an electrical capacity of 100 megawatts will be a nationally significant infrastructure project and therefore development consent will be required. The description of Work No.1 does not refer to an upper limit on the capacity of the generating station that development consent is being sought for. It is not considered that imposing an upper limit is desirable or necessary. The DCO includes parameters in which the Authorised Development must be constructed and it is on this basis which the environmental impact assessment has been undertaken. There is no reason to limit the electrical output capacity of the Authorised Development provided the parameters of development are not exceeded. There are

advantages in not imposing an upper limit so that the Undertaker can take advantage of technical advancements that emerge in the coming years in terms of wind turbine efficiency which would enable it to still construct the Authorised Development within the existing parameters but to increase capacity beyond the capacity which is currently anticipated based on existing technology.

1.4.2 The 'Associated Development', for the purposes of section 115 of the 2008 Act comprises Work Nos. 2 to 14 of the Authorised Development. They are as follows:

- Work No. 2 – up to two offshore substation platforms and up to one offshore converter platform;
- Work No. 3 – up to two cable circuits connecting Work No. 2 and Work No. 4A;
- Work No. 4A – up to two cable circuits and associated ducting between Work No. 3 and Work No. 4B, including up to drilling exit pits for trenchless installation techniques, and a temporary work area for vessels;
- Work No. 4B – landfall connection works of up to two cable circuits and associated ducting, and trenchless installation technique works, between Work No. 4A and Work No. 4C;
- Work No. 4C – onshore connection works of up to two cable circuits and associated ducting between Work No. 4B and Work No. 4D;
- Work No. 4D – onshore connection works comprising up to two cable circuits and associated ducting between Work No. 4D and Work No. 6, up to drilling entry pits for trenchless installation techniques, up to two transition joint bays, and associated working areas, laydown areas, and means of access;

- Work No. 5 – temporary compound including working and laydown areas;
- Work No. 6 – onshore connection works comprising either:
 - a) up to two cable circuits and associated ducting between Work No. 4D and Work No. 12 and the power to pull two cable circuits through existing ducts between Work No. 6 and Work No. 14, including working areas and laydown areas and means of access; or
 - b) up to two cable circuits to be pulled through existing ducts between Work No. 4D and Work No. 12 including working areas and laydown areas and means of access.

Should the Applicant lay cable ducting for Five Estuaries, Work No. 6B provides for the laying of two additional cable circuits for later installation of electrical connections between Work No. 4D and Work No. 12 by Five Estuaries.

- Work No. 7 – temporary compounds including temporary working areas and laydown areas and means of access.
- Work No.8 – temporary means of access including creation and improvement of accesses and visibility splays and vegetation clearance.
- Work No. 9 – works to permanently widen and improve the junction between Bentley Road and the A120 and to permanently widen and improve Bentley Road from A120 to Work No. 6, including temporary provision of area for non-motorised user access.
- Work No. 10 – permanent means of access including creation and improvement of accesses and visibility splays and vegetation clearance.
- Work No. 11 – an onshore substation including platform or foundations, electrical equipment including switch gear, power transformers, reactive compensation equipment, filters, cooling equipment, control and welfare

buildings, lightning rods, internal roads, security fencing and other associated equipment, structures and buildings including noise-attenuation works and permanent security fencing and security gate.

- Work No. 12 – onshore substation compound including up to two cable circuits and associated ducting between Work No. 6 and Work No. 14 and the power to pull two cable circuits through existing ducts between Work No. 6 and Work No. 14, including working areas and laydown areas and means of access, associated landscaping and drainage works, temporary and permanent means of access, temporary working and laydown areas, and ecological and environmental mitigation works, including habitat creation.

Should the Applicant lay cable ducting for Five Estuaries, Work No. 12B provides for the laying of ducting for two additional cable circuits for later installation of electrical connections between Work No. 6A and Work No. 14 by Five Estuaries.¹

- Works No. 13 – Groundworks, drainage works, outfall and planting including working areas and laydown areas and means of access.
- Work No. 14 – Electrical works to connect to the new National Grid substation including but not limited to cabling, cable sealing ends, circuit breakers, surge arrestors, dis-connectors, transformers, busbars and busbar clamp measuring equipment, relay marshalling rooms and electrical earthing works, including connection works of up to two buried 400kV cable circuits and associated ducting between Work No. 12 and the National Grid substation, including electrical engineering works within and around the

¹ Work Nos. 6B and 12B are included to facilitate the Applicant laying ducting for Five Estuaries. More information on the coordination between North Falls and Five Estuaries is set out at section 4.3 below.

National Grid substation buildings and compound, means of access, and temporary working and laydown areas.

1.4.3 The Associated Development includes in connection with Work Nos. 1, 2, 3 and 4A, such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including:

- Scour protection around the foundations of the offshore structures;
- Cable protection measures such as rock placement and the placement of rock and/or concrete mattresses, with or without frond devices;
- Dredging;
- The removal of material from the seabed required for the construction of work nos. 1, 2, 3 and 4a and the disposal of inert material of natural origin and/or dredged material within the order limits produced during construction drilling, seabed preparation for the installation of the foundations of the offshore structures, during seabed preparation for cable laying and excavation of drilling pits for trenchless installation techniques;
- Creation and use of temporary vessel laydown areas, use of cable anchors;
- Removal of static fishing equipment; and
- Lighting.

1.4.4 Further in connection with such Work Nos. 4B, 4C, 4D, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including:

- Haul roads, ramps, watercourse and other temporary crossings, means of access and other vehicular and/or pedestrian means of access, including creation of new tracks and footpaths, and/or widening, upgrades, alterations and improvements of existing roads, tracks and footpaths;
- Bunds, embankments, swales, landscaping, signage, fencing and boundary treatments and alteration of groynes;
- Provision of temporary and permanent ecological and environmental mitigation, enhancement and compensation works;
- Spoil storage and associated control measures;
- Jointing bays, link boxes, cable ducts, works for trenchless installation technique crossings, cable protection, joint protection, manholes, marker posts, underground cable markers, tiles and tape, and lighting and other works associated with laying cables and/or pulling cables through cable ducts;
- Works for the provision of apparatus including cabling, water and electricity supply works, foul drainage provision, surface water management systems, temporary drainage during installations of cables and culverting;
- Works to alter the position of apparatus, including mains, sewers, drains and cables;
- Works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;

- Landscaping works and habitat creation including installation of bird and bat boxes, creation of hibernacula and reinforcement of existing planting to provide habitat;
- Works for the benefit or protection of land affected by the authorised development;
- Working sites in connection with the carrying out of the authorised development, lay down areas and compounds and storage compounds;
- Works of restoration; and
- Fencing or other means of enclosure; and
- Such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development.

1.4.5 In addition, the Order is proposed to grant consent for the Ancillary Works, which comprise:

- Intrusive ground investigations including the making of bore holes and trial pits;
- Temporary landing places, moorings or other means of accommodating vessels in the construction, maintenance and/or decommissioning of the authorised development;
- Marking buoys, beacons, fenders and other navigational warning or ship impact protection works; and
- Temporary works for the benefit or protection of land, watercourses or structures affected by the authorised development.

- 1.4.6 It is anticipated that subject to the DCO having been made by the SoS, construction work on the Authorised Development would commence in in 2027 at the earliest. The construction phase would be for a period of up to 5 years.
- 1.4.7 A more detailed description of the Authorised Development is provided at Schedule 1 'Authorised Development' of the draft DCO and Chapter 5 – Project Description of the ES Volume 1 (Document Reference: 3.1.7) and the areas within which each of the main components of the Authorised Development are to be built is shown by the coloured and hatched areas on the Works Plans (Document References. 5.6 and 5.7).

1.5 Parameters in the Order

- 1.5.1 The Authorised Development described in Parts 1 and 2 of Schedule 1 to the Order and the design parameters secured in Requirements 2 and 6 of Part 3 of Schedule 1 provide flexibility in the delivery of the Authorised Development. This approach has been recognised as appropriate for a wide range of NSIPs and is described in PINS Advice Note 9: Rochdale Envelope (July 2018).
- 1.5.2 The parameters include the following:
- Maximum number of wind turbine generators ('**WTG**');
 - Maximum dimensions of WTG;
 - The foundation parameters of WTG;
 - Separation distances between WTG;
 - Maximum dimensions of offshore substation platforms and the offshore converter platform;
 - The foundation parameters of offshore substation platforms and the offshore converter platform; and

- The number and length of cable systems and volume of cable protection for the cable systems.

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

2. PURPOSE AND STRUCTURE OF THIS DOCUMENT

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

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

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

- Part 1: Article 1 sets out what the Order may be cited as and when it comes into force. Article 2 sets out the meaning of various terms used in the Order;
- Part 2: Articles 3 to 4 provide development consent for the Authorised Development and allow it to be constructed and maintained. Article 5 sets out who has the benefit of the powers of the Order and how those powers can be transferred. Articles 6 and 7 relate to application and modification of legislative provisions and provide a defence to proceedings in statutory nuisance respectively;
- Part 3: Articles 8 to 16 provide a suite of powers in relation to street works. The powers include the ability for the undertaker to be able to carry out works to and within streets, create or improve accesses, to temporarily stop up streets and to be able to divert and temporarily stop up public rights of way and access land;

- Part 4: Articles 17 to 19 set out four supplemental powers relating to discharge of water, protective work to buildings, authority to survey and investigate land onshore. Article 20 provides a unified regime for the removal of human remains, which is included on a precautionary basis in case human remains are discovered while carrying out the Authorised Development;
- Part 5: Articles 21 to 34 provide for the undertaker to be able to compulsorily acquire the Order land and rights over/within it, and to be able to temporarily use parts of the Order land for the construction or maintenance of the Authorised Development. The provisions provide for compensation to be payable to affected persons in respect of these powers, where that is not already secured elsewhere. These articles also provide for powers in relation to equipment of statutory undertakers;
- Part 6: Articles 35 and 36 provide powers for the operation of the generating station and the provision of the deemed marine licences in Schedules 8, 9 and 10 to the Order; and
- Part 7: Articles 37 to 51 include various general provisions in relation to the Order:
 - Articles 37 to 46 includes provisions relating to the application of statutes relating to leases, that the Order land will be 'operational land', allow for the felling or lopping of trees and removal of hedgerows, provide for the certification of documents relevant to the Order, arbitration in case of disagreements under the Order, provide an ability to use the appeal mechanism in s.78 of the 1990 Act where a party either refuses or withholds consent required under a requirement attached to the DCO, cover the abatement of works abandoned or decayed, secure saving provisions for Trinity House, and a provision in respect of Crown land.

- Article 47 provides protection for statutory undertakers through the protective provisions (set out in Schedule 14);
- Article 48 provides a requirement for the undertaker to put into place a guarantee or alternative form of security in advance of exercising powers under Part 5 of the Order;
- Article 49 provides that any compensation payable under the Order cannot be payable in respect of the same matter under other enactments, contracts or rule of law;
- Article 50 provides for methods of service of notices in relation to the DCO; and
- Article 51 gives effect to Schedule 15 which sets out the requirement for delivery of compensatory measures for predicated adverse effects on integrity on Lesser Black Backed Gulls at the Alde-Ore Estuary Special Protection Area.

2.1.4 There are 15 Schedules to the Order, providing for:

- The description of the Authorised Development and ancillary works (Parts 1 and 2 of Schedule 1);
- The Requirements (a form of control akin to planning conditions) applying to it (Part 3 of Schedule 1);
- Matters in relation to streets and public rights of way and accesses (Schedules 2 to 4);
- Land in which new rights may be acquired (Schedule 5);
- Amendments to statutes to ensure appropriate compensation is payable where new rights over land are acquired under the Order (Schedule 6);

- Land which may be used temporarily for the Authorised Development (Schedule 7);
- Deemed marine licences (Schedules 8, 9, and 10);
- List of hedgerows that may be removed pursuant to article 39 (Schedule 11);
- List of documents to be certified (Schedule 12);
- The Arbitration Rules (Schedule 13);
- Provisions protecting statutory undertakers and their apparatus (Schedule 14); and
- Compensation provisions (Schedule 15).

3. PURPOSE OF THE ORDER

- 3.1.1 As the Authorised Development is an offshore generating station with a capacity of over 100 MW, in England, it is a NSIP under sections 14(1)(a) and 15 of the 2008 Act. The Applicant therefore requires development consent under the 2008 Act to construct and operate the Authorised Development. Development consent may only be granted by order, following an application to the SoS (section 37 of the 2008 Act).
- 3.1.2 The Applicant is therefore making the Application to the SoS for a development consent order for the construction, maintenance and operation of an offshore wind turbine generating station.
- 3.1.3 The Order refers to the person authorised to exercise the powers in the Order as ‘the undertaker’, and defines the undertaker as North Falls Offshore Wind Farm Limited.
- 3.1.4 In addition to providing for the construction and operation of the Authorised Development, the Order will, in accordance with section 122 and section 120(3) / Schedule 5 of the 2008 Act, authorise the acquisition of land and rights over land, and the extinguishment of, or interference with, interests in or rights over land. The Book of Reference (Document Reference: 6.3) sets out a description of the land and interests included in the Order, and this is shown on the Land Plans (Document Reference: 5.3). The Order provides for the areas which can be compulsorily acquired and what rights can be acquired, and what other rights and interests will be affected. The Order and the Book of Reference should be read together with the Statement of Reasons (Document Reference: 6.5) which accompanies the Application and sets out the justification for the acquisition or interference with the Order land.
- 3.1.5 The matters for which development consent is sought are summarised below and described more formally in Schedule 1 to the Order.

- 3.1.6 Section 115(1) of the 2008 Act provides that development consent may be granted for "(a) development for which development consent is required, or (b) associated development". The SoS must therefore be satisfied that all the elements included within the 'Authorised Development' are either part of the NSIP or are associated development, in order to include them in the Order pursuant to section 115 of the 2008 Act.
- 3.1.7 The generating station and related development within Work No. 1 constitutes "development for which development consent is required" (as a NSIP, as set out above), and the Order also includes other development which is Associated Development (i.e. not an integral part of the NSIP itself) which are included at Work No. 2 to Work No. 14. The Applicant has considered these works against the policy and criteria in the Department for Communities and Local Government 'Guidance on associated development applications for major infrastructure Authorised Developments' (April 2013). It is clear that all of these works come within the guidance and are clearly capable of being granted development consent by the SoS pursuant to section 115.
- 3.1.8 The approach taken by the Applicant between those parts of the Authorised Development which form the NSIP and those parts that form Associated Development follows the approach taken by all DCO applications for offshore windfarms to date. It is also based on the distinction between generation and transmission assets under the Offshore Transmission Operator regime. This regime is regulated by the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015 and requires, after construction, for the transmission assets to be owned and operated separately from the generating station.
- 3.1.9 In particular, Work Nos. 2 to Work No.14 are all:
- Directly associated with the NSIP, as they are all required to support the construction, maintenance or operation of the offshore wind turbine

generating station, or to mitigate its impacts (paragraph 5(i) of the Guidance);

- Subordinate to the NSIP – none of them are an aim in themselves (paragraph 5(ii));
- Proportionate to the nature and scale of the NSIP (paragraph 5(iv));
- Of a nature which is typically brought forward alongside an offshore wind turbine generating station (paragraph 6);
- Listed in or analogous to the types of associated development listed in Annexes A and B to the Guidance. Those annexes mention (of relevance to Work No. 2 to Work No. 14):
 - *“Formation of new or improved vehicular or pedestrian access (to stations, work sites etc.), whether temporary or permanent”, “alteration or construction of roads” and “highway... route/junction improvements”* would include all site accesses and upgrades to junctions to assist with the onshore connection works (Work Nos. 7, 8, 9, 10, and 14);
 - *“Temporary haul roads”* would include temporary vehicular access tracks (Work No. 8);
 - *“Lay down areas”* would include temporary storage areas and construction compounds (Work Nos. 4D, 5, 6 (including 6A and 6B), 7, 12 (including 12A and 12B), 13, 14);
 - *“Connection to Electricity Networks” and “underground lines”* would include connection works (Work Nos. 4C, 4D, 6 (including 6A and 6B), 11, 12 (including 12A and 12B), and 14);
 - Hard and soft landscaping would include landscaping and other works to mitigate adverse impacts, including the creation of compensatory habitats (Work No. 12 (including 12A and 12B));

- *"Onshore substations"* would include the onshore substation (Work No. 11);
- *"Sea/land cable interface buildings and structures"* would include the offshore substations and offshore converter platform (Work No. 2);
- *"Facilities for additional sub-sea cables"* would include the offshore export cables and associated cable protection (Work No. 3 and 4A) and
- *"Jointing pits"* would include joint bays and link boxes (Work No. 4D and 6 (including 6A and 6B)).

3.1.10 A more detailed description of the various elements of the Authorised Development is provided in Chapter 5 – Project Description of the ES (Document Reference: 3.1.7).

3.2 Co-ordination with National Grid and the proposed Norwich to Tilbury Reinforcement Project DCO

3.2.1 Connection to the National Grid will, unless the Applicant constructs build option 3, providing an offshore connection, be made at a new substation to be called the East Anglia Connection Node (EACN) which is part of the Norwich to Tilbury overhead line DCO proposal being promoted separately by National Grid. This connection will be made via cable circuits installed underground between the landfall and the grid connection. A new onshore substation, for the Authorised Development, will be constructed in the vicinity of National Grid's new EACN. The DCO includes an area for the construction of the cable connection to the EACN and acquisition of rights to install and retain the cables (Work No. 14).

3.2.2 Some flexibility is required in this area as it is not yet known where the connection to the substation will be created. National Grid are currently designing this substation, and the Applicant requires to be able to connect into the substation as directed by National Grid having regard to the design of those

works. Accordingly, the cable corridor currently allows connection to the substation at more than one point in order to be routed to any point around the EACN to ensure that the appropriate connection can be made once the connection location (which will be within Work No. 14) is specified by National Grid.

3.3 Co-ordination with Five Estuaries and build options

- 3.3.1 The onshore export cable corridor and substation arrangement have been designed in co-ordination with the adjacent Five Estuaries, so that the authorised works include flexibility for the installation of a second set of cable ducts at the same time as the Applicant installs its ducts; which second set of ducts could then be used by Five Estuaries (Works Nos. 6B and 12B).
- 3.3.2 The onshore cables of the two projects will run immediately adjacent within the same cable corridor, and the substations have been co-located in the same location to the west of Little Bromley. Due to electrical requirements separate cables and transformers are required for each project. This approach allows for opportunities to minimise environmental and community disruption through co-ordinated delivery.
- 3.3.3 In order to allow the flexibility for coordinated construction, the Order has been drafted to allow for scenarios based on the gap between the two projects meeting their respective Final Investment Decisions ('FIDs'). Two 'build options', which cover the onshore delivery scenarios are being presented as part of the application:
- Build option 1: The Applicant only constructs those works required for the Authorised Development.
 - Build Option 2 (being Build Option 2A and Build Option 2B): The Applicant and Five Estuaries each consents ducts for their own and the other project,

with the first to construct completing ducting and the later pulling electrical cables through pre-laid ducts at a later date.

- 3.3.4 The Order includes a Requirement providing that the Applicant must notify the relevant planning authority as to which (if any) of the onshore Build Options it is forward.
- 3.3.5 The co-ordinated approach (Build Option 2) necessitates an increase in the width of the corridor and area of substation site over which compulsory powers are sought in order that the works can be carried out under the first DCO to be implemented. From the transition joint bays above landfall to the substation location, the corridor has been designed to allow the installation of cables for the Applicant and cable ducts for Five Estuaries (and vice versa). Depending on which project proceeds to construction first, Five Estuaries would then install and operate the cables within the buried ducts under its own DCO.
- 3.3.6 The inclusion of Works to install a second set of ducts for Five Estuaries means that the width of the corridor which may be acquired is slightly wider than it would be for the Authorised Development in isolation. However, by following this approach, the following project efficiencies, with associated reduction in overall land take and environmental impacts, can be realised:
- A single haul road with the cable corridor to support construction;
 - Single access points at Temporary Construction Compounds (TCCs) from the highway network to service both projects, reducing both the number of physical works and reducing the extent of any traffic management measures required to ensure safety;
 - Single crossing points on roads where site access is not required;
 - Use of the same TCCs therefore reducing the total number of TCCs and the area required (minimising the interference with use of land and area of

land, volume of soils and extent of vegetation which is disturbed and requires to be restored); and

- Coordinated service connection (such as mains power, water, sewage) for TCCs.

3.3.7 The substation sites for the Authorised Development and Five Estuaries have been co-located in one area designed to co-ordinate with the National Grid EACN proposals. While each project would retain the responsibility for separate substation builds, the following would be delivered jointly under Build Option 1 to reduce environmental impacts:

- Common access route to the substations from Bentley Road;
- Common permanent access point and bellmouth from Ardleigh Road; and
- Aligned screening principles and advance planting for both projects.

3.3.8 Reduction in the potential impacts would mainly be associated with the reduction in overall land take, which include avoiding duplication of construction access works, and the associated reduction in construction traffic volumes.

3.3.9 Regardless of build option approach taken to deliver the onshore substation, co-locating with Five Estuaries allows the Applicant to keep impacts to a single area when considering cumulative development effects and have a lower overall land take when compared to locating the substations in different search areas.

3.3.10 Some elements of onshore construction (e.g. cable installation) would be reserved for each project regardless of the level of coordination for technical and commercial reasons.

3.3.11 The background to the consenting options, is set out in more detail in the Co-ordination Report (Document Reference: 2.5).

3.4 Facilitating an Offshore Coordinated Connection

- 3.4.1 As noted above, an offshore converter platform option has been included within the authorised development, to facilitate an offshore connection should that become feasible within appropriate timescales for North Falls. This is referred to as Build Option 3 within the draft Order.

4. PROVISIONS OF THE ORDER

4.1.1 The Order consists of 51 operative provisions, each referred to as articles, and 15 Schedules. The articles are considered below in numerical order (split between the 'Parts' of the Order), and Schedules are considered along with the article which introduces them or to which they relate.

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

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

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

- Definitions of documents submitted as part of the Application and certified by the SoS, and which are referred to in the Order have been added;
- A definition of "commence" has been added to the Order, which excludes onshore site preparation works. The effect of the definition is that certain 'carved out' works can be carried out prior to the Requirements contained in Schedule 1 to the Order being discharged. The ability to do this is of critical importance to the Applicant in the context of the envisaged construction programme. It is considered that the works that are 'carved out' would not have any impact on the effectiveness of the Requirements from an environmental protection perspective;

- A definition of "maintain" has been added to make clear what is authorised under article 4 (see below), and in particular that it does not permit the undertaker to carry out any maintenance operations which would cause different environmental effects to those identified in the ES (Application Volume 3.1);
- The "undertaker" is defined as North Falls Offshore Wind Farm Limited, who has the benefit of the provisions of the Order, subject to the provisions of article 5 (see below).

4.2.3 Article 3 (*Development consent etc. granted by this Order*) grants development consent for the Authorised Development and consent for the ancillary works. Together the Authorised Development and the Ancillary Works form the Authorised Development. Schedule 1 describes the Authorised Development in detail, split into 'work numbers', each of which represents different sections or parts of the Authorised Development. This split of the Authorised Development between different work numbers enables the Order to refer to different parts of the Authorised Development by citing the relevant work number. In respect of Work Nos. 1 to 4B these must be constructed seaward of MHWS and Work Nos. 4C to 14 must be constructed landward of the MHWS.

4.2.4 Article 4 (*Power to maintain the Authorised Development*) provides for the maintenance of the Authorised Development, and reflects the terms of the Model Provisions, subject to Article 4(2) providing that grant of development consent does not relieve the undertaker of the need to obtain any other necessary consents to operate the authorised development, such as obtaining further marine licences for offshore works not covered by the deemed marine licences included in the Order.

4.2.5 Article 5(1) (*Benefit of Order*) overrides Section 156(1) of the 2008 Act (which is permitted by Section 156(2)) and provides that the benefit of the Order is for the undertaker, rather than anyone with an interest in the land.

- 4.2.6 Given the nature of the authorised development and the fact that powers of compulsory acquisition are sought it would be impracticable and inappropriate for the Order to be 'open' as to who may implement it, as might occur without this provision. Overriding section 156(1) is common in DCOs that have been made, including the Hornsea Three Offshore Wind Farm Order 2020, the Norfolk Vanguard Offshore Wind Farm Order 2020, the Norfolk Boreas Offshore Wind Farm Order 2021, the East Anglia ONE North Offshore Wind Farm Order 2022, the Hornsea Four Offshore Wind Farm Order 2023, the Awel y Môr Offshore Wind Farm Order 2023, and the Sheringham and Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.
- 4.2.7 Article 5 provides that the undertaker can, with the written consent of the SoS, either transfer the benefit of the Order and/or grant to another person the benefit of the provisions of the Order and such related statutory rights as may be agreed. The Order includes drafting which makes it clear that the provisions of Article 5 apply to the Deemed Marine Licences and are to be applied to the whole of any Deemed Marine Licence to be transferred, with the consent of the SoS.
- 4.2.8 The requirement to obtain the consent of the SoS for the transfer of the Order or Deemed Marine Licences is unnecessary under the circumstances referred to in paragraph (8) of the Article. They include the following:
- Where the transferee or lessee is a holder of a licence under the Electricity Act 1989;
 - Where the transferee or lessee is a highway authority responsible for a highway in which any or all of the highway widening and improvement works consented as Work No. 9, or any other works within a highway; and
 - Where the time limits for claims of compensation in respect of the acquisition of land or effects upon land as a consequence of the Order has elapsed.

4.2.9 The 2009 Act includes provisions relating to the transfer of a Deemed Marine Licence. Paragraph (9) makes it clear that the procedure included in sections 72(7) and (8) of that Act do not apply, save that the MMO may amend any Deemed Marine Licence to update the name of the undertaker to the name of the transferee.

4.2.10 Article 5 includes a procedure to be adopted when making an application to the Secretary of State for consent. This procedure reflects in part the procedure included in the Hornsea Four Offshore Wind Farm Order 2023. It is considered necessary to provide certainty in the absence of any other statutory procedure for obtaining consent. The essential elements of this procedure are as follows:

- Before any application is made to the SoS the Undertaker shall consult with the SoS by giving notice in writing; and
- The SoS may not provide consent for the transfer or grant to another person of the deemed marine licences before consulting the MMO.

4.2.11 Article 5(7) provides that where the Undertaker has transferred the benefit of the Order or granted the benefit of the Order to a lessee then:

- The transferred benefit will include any rights that are conferred and any obligations that are imposed;
- The transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the undertaker;
- The benefits or rights conferred under paragraph (1) of the article is subject to the same restrictions, liabilities and obligations as applies to the undertaker.

4.2.12 Article 6 (*application and modification of legislative provisions*) provides (pursuant to section 120(5)(a) of the 2008 Act) for the disapplication in relation

to the Authorised Development of certain requirements which would otherwise apply under general legislation. Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relate to any matter for which provision may be made in the order.

4.2.13 Article 6 provides for the disapplication of the following specified provisions:

- Article 6(a) modifies the provisions of regulation 6 of the Hedgerows Regulations 1997 to ensure that the removal of hedgerows in accordance with the DCO will be lawful. This ensures that the Applicant will be able to carry out the Authorised Development. The form of wording used in this article is precedented and has been used in many made orders, including the Norfolk Vanguard Offshore Wind Farm Order 2020, the Norfolk Boreas Offshore Wind Farm Order 2021, the East Anglia ONE North Offshore Wind Farm Order 2022, the Hornsea Four Offshore Wind Farm Order 2023, and the Sheringham and Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.
- Article 6(b) dis-applies provisions of the Neighbourhood Planning Act 2017. This disapplication provides that the temporary possession provisions in that enactment do not take effect at the expense of the temporary possession provisions contained in the Order. This is on the basis that the temporary possession of land is dealt with by articles 31 (temporary use of land for carrying out the authorised development) and 32 (temporary use of land for maintaining the authorised development) and the wording of those provisions is well established. The 2017 Act provisions differ from those in the Order and are untested, as they are not yet in force, it is therefore necessary to disapply them in case they should come into force in the future. The form of wording in this article is precedented and has been used in the Hornsea Three Offshore Wind Farm Order 2020 and the Hornsea Four Offshore Wind Farm Order 2023. Additionally, provisions

with the same effect are included in article 7(2) of the Norfolk Vanguard Wind Farm Order 2020, article 7(2) of the Norfolk Boreas Offshore Wind Farm Order 2021, article 7(d) of the Awel y Môr Offshore Wind Farm Order 2023, and article 6(e) of the Sheringham and Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.

- Article 6(c) to (e) and 6(h) disapplies certain provisions relating to the need for an environmental permit under the Environmental Permitting (England and Wales) Regulations 2016 in relation to flood risk activities, as well as certain byelaws and regulations regarding watercourses. These are permits for activities which may be a necessary part of constructing the authorised development. To provide certainty that the Authorised Development can proceed, the Order disapplies the requirement for a separate statutory consent to be obtained from the Environment Agency in relation to these activities. The form of wording in this article is precedented and has been used in the Hornsea Four Offshore Wind Farm Order 2023.
- Article 6(f) disapplies Sections 6 and 30 of the Essex Act 1987. Section 6 of that Act applies to land which is adjoining or accessible from a highway such as grass verge. Section 30 of that Act includes miscellaneous provisions in respect of unauthorised structures on seashore and its disapplication is relevant due to the need to temporarily place equipment on seashore which may create a temporary obstruction.
- Article 6(g) disapplies Holland Haven Country Park Local Nature Reserve byelaws made by Tendring District Council on 5th July 1995 under sections 20, 21(4) and 106 of the National Parks and Access to the Countryside Act 1949(12) in accordance with section 236 of the Local Government Act 1972(13). These byelaws prohibit, inter alia, disturbing living creatures, using vehicles on any part of the reserve other than on a highway or a road, erecting any structure and engaging in any activity which is likely to cause a disturbance. The authorised development would involve taking access to

land by vehicles to carry out construction activity which may result in some disturbance.

- Article 6(i) disapplies sections 28E and 28H of the Wildlife and Countryside Act 1981, relating to the duties of owners or occupiers carrying out operations in sites of special scientific interest. Section 28E imposes duties on owners and occupiers of land notified as being of special interest to refrain from activities specified in a notice given by Natural England unless those operations are carried out as part of a management agreement or with the consent of Natural England. The disapplication of this provision is necessary to ensure that notification of a proposed SSSI will not impede the delivery of the Authorised Development, and this is justified given that the Application has been subjected to extensive environmental impact assessment, public consultation, and will be subject to a public examination during which such matters can be addressed. Consent under section 28E of the Wildlife and Countryside Act 1981 is not a consent prescribed for the purposes of section 150 of the Planning Act 2008. The disapplication of this provision is precedent by the M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022 and the A303 (Amesbury to Berwick Down) Development Consent Order 2023.

4.2.14 Article 7 (*Defence to proceedings in respect of statutory nuisance*) provides that no one is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out construction or maintenance or decommissioning of the Authorised Development and for which notice has been given under section 60 or consent obtained under section 61 of the Control of Pollution Act 1974 or which cannot be reasonably avoided as a consequence of the Authorised Development. Article 7 is a model provision.

4.3 Part 3 (Streets)

- 4.3.1 Article 8 (*Street works*) is a model provision and authorises the undertaker to carry out various works within the streets specified in Schedule 2 of the Order, which are within the Order limits. The works permitted by the article include (a) breaking up or opening a street, or sewer, drain or tunnel, (b) tunnelling or boring under a street, (c) placing apparatus in a street, (d) maintaining apparatus in a street or changing its position and (e) executing any works required for or incidental to any works referred to in sub-paragraphs (a) to (d). The right given by the article is a statutory right for the purposes of 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991.
- 4.3.2 Article 9 (*Application of the 1991 Act*) confirms that some of the provisions of the New Roads and Street Works Act 1991 apply to the carrying out of street works under article 8 and the temporary stopping up, alteration, temporary diversion or restriction of a street under articles 11 and 12. The relevant provisions are referred to in paragraph (2) of the Article. This provision is preceded in the Hornsea Three Offshore Wind Farm Order 2020, the Norfolk Vanguard Offshore Wind Farm Order 2020, the Norfolk Boreas Offshore Wind Farm Order 2021, the East Anglia ONE North Offshore Wind Farm Order 2022, the Hornsea Four Offshore Wind Farm Order 2023, the Awel y Môr Offshore Wind Farm Order 2023, and the Sheringham and Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024. The provision is required in order to clarify the treatment of the authorised works in relation to streets for the purposes of the New Roads and Street Works Act 1991 and is essential to ensure the timely delivery of the Authorised Development.
- 4.3.3 Article 10 (*Construction and maintenance of new or altered highway*) sets out conditions for any new highway, or any altered or diverted section of existing highway, to be constructed under the Order to be completed to the satisfaction of the relevant highway authority, with that highway authority then required to

maintain the highway from its completion. This article is required to allow for appropriate adjustments to the surrounding highway network and to make provision for private means of access that are affected by the Authorised Development.

- 4.3.4 Article 11 (*Temporary closure of public rights of way*) provides for the temporary closure of the public rights of way specified in Schedule 3 of the Order to the extent stipulated in the same Schedule, for the purposes of carrying out the Authorised Development. This article requires that any temporary closure of a public right of way cannot proceed without a diversion for that public right of way first being in place, to the standard defined in the Public Access Management Plan within the Code of Construction Practice.
- 4.3.5 Article 12 (*Temporary restriction of use of streets*) enables the undertaker to temporarily close, alter or divert any street. The article requires reasonable access to be provided for pedestrians going to or from premises abutting a street affected by the alteration or diversion. This article largely follows the model provisions, except that there is an additional power given to the Undertaker which allows it to use any street or public right of way temporarily stopped up as a temporary working site. The Undertaker may not use any street without having obtained the consent of the street authority who may attach reasonable conditions and such consent is subject to deemed consent provisions if the street authority does not notify the Applicant of its decision within 28 days of receiving an application. Articles 11 and 12 are required to enable appropriate management of traffic for the purposes of carrying out the Authorised Development.
- 4.3.6 Article 13 (*Access to works*) is a model provision which permits the undertaker to form new or to improve existing means of access in the locations specified in Schedule 4 to the Order. Means of access can also be provided in other locations reasonably required for the Authorised Development with the approval of the relevant planning authority, in consultation with the highway

authority. Paragraph (2) of this article provides that, where consent is required from the Relevant Planning Authority but is not given within 56 days of it receiving the application, then the Relevant Planning Authority is deemed to have provided consent. Paragraph (2) is not a model provision, but has precedent in the Hornsea Four Offshore Wind Farm Order 2023, the Norfolk Vanguard Offshore Wind Farm Order 2020, the Norfolk Boreas Offshore Wind Farm Order 2021, the East Anglia ONE North Offshore Wind Farm Order 2022, and the Sheringham and Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024, all of which contain provisions on similar terms. This article is necessary as it will ensure that the Authorised Development can be carried out expeditiously by allowing the undertaker to create new temporary accesses as and where required, particularly in response to requests from landowners, occupiers and other affected parties.

4.3.7 Article 14 (*Traffic regulation*) provides the Undertaker with powers to make provisions relating to the stopping of vehicles on any road, priority of vehicular traffic, the use of roads and the use of roads by vehicles, as well as providing the power to place traffic signs and signals in the extent of roads in which the Undertaker has the power to carry out works under other articles. Paragraph (4) enables the Undertaker to impose speed limits as set out in Part 3 of Schedule 3 to the Order. This is so that the Undertaker may temporarily reduce the speed limits on streets affected by the Order, and listed in Schedule 3. This has been established as necessary in early stages of the road safety audit work for the project. This article requires consultation and notice to be given to the chief officer of police and the traffic authority. The traffic regulation measures made under this article have effect as though they were made under the 1984 Act, in order to ensure that they are binding upon road users.

4.3.8 Article 15 (*Agreements with street authorities*) is a modified model provision. The article included in the Order allows street authorities and the Undertaker to enter into agreements relating to any temporary closure, alteration or diversion of a street and the carrying out of any works referred to in Article

8(1). The Applicant has removed reference to the ability to enter into an agreement with a street authority to allow the construction of any new street and the maintenance of any bridge or tunnel carrying a street over or under the Authorised Development as those powers are not required for the Authorised Development. This same approach was taken in the Hornsea Three Offshore Wind Farm Order 2020, the Norfolk Vanguard Offshore Wind Farm Order 2020, the Norfolk Boreas Offshore Wind Farm Order 2021, the East Anglia ONE North Offshore Wind Farm Order 2022, the Hornsea Four Offshore Wind Farm Order 2023, and the Sheringham and Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.

4.3.9 Article 16 (*Power to alter layout etc. of streets*) allows for the alteration of the layout of any street for the purposes of construction, operation or maintenance, subject to obtaining the consent of the street authority and with the restoration of such streets to the reasonable satisfaction of the street authority. This article is necessary because, in order to construct, operate, and maintain the Authorised Development, the undertaker will need to alter street layouts and establish suitable accesses to ensure that the Authorised Development can be accessed effectively while ensuring there is minimal disruption to the local highway network. Similar wording has been used in other made Orders, including the Hornsea Three Offshore Wind Farm Order 2020, the Longfield Solar Farm Order 2023, the Hornsea Four Offshore Wind Farm Order 2023, and the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024.

4.4 Part 4 (Supplemental Powers)

4.4.1 Article 17 (*Discharge of water*) is a model provision which enables the Undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the Authorised Development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain

other conditions. The reference from the model provisions to s.85 of the Water Resources Act 1991 has been deleted as this section has now been repealed - this has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead. The article has also been updated to reflect the current approach to the drafting of statutory instruments and so that if the Undertaker makes an application for consent under the provisions of the article but the relevant party does not provide notification of its decision within 28 days of the Undertaker's application then consent will have been deemed to have been given.

- 4.4.2 Article 18 (*Protective work to buildings*) is a model provision that allows the Undertaker, at its own expense, to carry out protective works to any building within the Order limits. Such protective works can be undertaken at any time before or during the carrying out in the vicinity of the relevant building works forming part of the Authorised Development. Protective works can also be undertaken after the carrying out of works forming part of the Authorised Development for a period of 5 years from the day on which that part of the Authorised Development was first opened for use.
- 4.4.3 In addition to the powers to undertake protective works the article includes powers to enter any building and land within its curtilage to survey to determine whether protective works are needed and there are powers to enter adjacent land to carry out any protective works.
- 4.4.4 There is a requirement, before utilising the powers in the article, to serve notice on owners and occupiers with at least 14 days' notice of the said works. In respect of some of the powers included in the article there is an ability for a counter notice to be served by the landowner/occupier within a period of 10 days from the day on which the notice was served.
- 4.4.5 The article includes compensation provisions both in relation to the consequences of the protective works being undertaken, but also where protective works are undertaken but they are inadequate to protect the building

or land from damage (within a period of 5 years from the date that part of the development is first opened for use).

- 4.4.6 The model provision has been modified to provide that section 13 (refusal to give possession to acquiring authority) of the Compulsory Purchase Act 1965 applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.
- 4.4.7 Article 19 (*Authority to survey and investigate the land onshore*) is a modified model provision which allows the Undertaker to survey and investigate land, including bringing equipment onto the land and making trial holes, bore holes and trenches. The power is subject to a number of conditions including a requirement for 14 days' notice to be given and is subject to the payment of compensation.
- 4.4.8 The model provision has been modified as follows:
- Paragraph (4) provides that trial holes, bore holes or trenches may not be made in a highway or private street without the consent of the highway or street authority. Per paragraph (6), if a highway or street authority after having received an application to make trial holes, bore holes or trenches within a highway or private street fails to notify the undertaker within 28 days of having received the application it will have been deemed to have provided consent. This approach has been adopted in the Norfolk Vanguard Offshore Wind Farm Order 2020, the Norfolk Boreas Offshore Wind Farm Order 2021, the East Anglia ONE North Offshore Wind Farm Order 2022, the Hornsea Four Offshore Wind Farm Order 2023, the Awel y Môr Offshore Wind Farm Order 2023, and the Sheringham and Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.

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

4.4.9 Article 20 (*Removal of human remains*) requires the Undertaker, before it carries out any development or works which will or may disturb any human remains, to remove those remains. This article is included on a precautionary basis in case human remains are discovered while carrying out the authorised development. Without this article, authorisation from the appropriate Minister would be required to remove remains. The Article sets out a process of notification of the discovery of remains and for their removal and reinternment or cremation unless the remain are of such an age that establishing their identity is likely to be imposed and they are more appropriately treated as of archaeological value. The removal of any remains is required to be carried out in accordance with any directions which may be given by the Secretary of State. Article 20 follows is a model provision and was included in the A428 Black Cat to Caxton Gibbet Development Consent Order 2022, the A47 Wansford to Sutton Development Consent Order 2023, the A303 (Amesbury to Berwick Down) Development Consent Order 2023, and the A66 Northern Trans-Pennine Development Consent Order 2024.

4.5 Part 5 (Powers of Acquisition)

4.5.1 Article 21 (*Compulsory acquisition of land*) provides for the compulsory acquisition of such land as is required for the Authorised Development (or to facilitate the Authorised Development or is incidental to the Authorised Development). The article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in article 25 (private rights).

4.5.2 Article 22 (*Compulsory acquisition of land: minerals*) is a model provision which incorporates Parts 2 and 3 of Schedule 2 (minerals) of the Acquisition

of Land Act 1981 in respect of any mines and minerals under any land which has been compulsorily purchased as part of the Order. These Parts exempt any existing rights in minerals from the scope of compulsory acquisition, while also providing a procedure for dealing with the situation where the owner of mines and minerals wishes to work them.

- 4.5.3 Article 23 (*Time limit for exercise of authority to acquire land compulsorily*) imposes a time limit for the exercise of compulsory acquisition powers of seven years, confirming this to be the 'applicable period' for the purposes of the 1965 and 1981 Acts (as amended by the Levelling Up and Regeneration Act 2023). These Acts both provide for the time limit for the exercise of compulsory purchase powers to be extended in the event of an application to the Court challenging the making of an Order granting compulsory acquisition. Paragraph (3) expands the scope of this time limit to cover the power to take temporary possession of land to construct the authorised development. The time limit is extended in the event of a challenge to the making of the DCO, aligning the powers of temporary possession and compulsory acquisition, mirroring the drafting in the 1965 and 1981 Acts. This means that, in the event of any delay to the Authorised Development being constructed due to legal challenge, the undertaker retains the full intended ability to use temporary possession powers where the acquisition of rights or land is not required over that land or the whole of that land.
- 4.5.4 Article 24 (*Compulsory acquisition of rights etc.*) entitles the Undertaker to acquire rights over land and impose restrictive covenants which may be compulsorily acquired, including rights already in existence, or to create new rights.
- 4.5.5 The article provides that in respect of the Order land specified in Schedule 5 of the Order, the Undertaker's powers of acquisition are limited to the purposes specified in that same schedule. The ability to acquire new rights ensures that the Undertaker is able to seek a lesser interference with land where this is

appropriate (whether in the context of new or existing rights) as the Authorised Development is implemented.

- 4.5.6 Paragraphs (5) and (6) provide that, where the acquisition of new rights or the imposition of a restriction under the Order is required for a statutory undertaker, the undertaker may, with the consent of the SoS, transfer the powers to the statutory undertaker.
- 4.5.7 Paragraph (8) provides that special category land is discharged from rights, trusts and incidents so far as those are inconsistent with the exercise of the new rights acquired by the undertaker for the authorised development. Further details on the special category land and the application of section 132(3) of the 2008 Act are set out in the Statement of Reasons.
- 4.5.8 This article is a departure from the model provisions, but is preceded in the East Anglia Three Offshore Wind Farm Order 2017 and the Hornsea Four Offshore Wind Farm Order 2023.
- 4.5.9 Article 25 (*Private rights*) is based on a model provision and has the effect of extinguishing private rights over land where: (1) land is subject to compulsory acquisition under article 21 of the Order; or (2) land is subject to compulsory acquisition of rights or the imposition of restrictive covenants under article 24. The article also suspends private rights for as long as the undertaker is in temporary possession of land under the Order, and is required because it enables the undertaker to take land with a clear, unencumbered title, thereby minimising impediments to the delivery of the Authorised Development. This article is preceded by the Hornsea Four Offshore Wind Farm Order 2023 and the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.
- 4.5.10 Article 26 (*Application of the 1981 Act*) applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of powers of compulsory acquisition pursuant to the Order. It gives the

Undertaker the option to acquire land via the process set out under the 1981 Act, rather than the notice to treat procedure. This article has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016.

- 4.5.11 Article 27 (*Statutory authority to override easements and other rights*) is intended to provide the Undertaker with certainty that it will not be prevented from carrying out the Authorised Project because of the existence of an unknown third party right, such as a covenant or easement, which was not revealed through its title investigation and due diligence exercise. The article closely mirrors section 237 of the Town and Country Planning Act 1990, which allowed a planning authority to carry out works on land which it has acquired or appropriated for planning purposes, notwithstanding any consequential interference with existing interests in or rights over the land, and accords with section 120(3) and (4) and item 2 of Part 1 of Schedule 5 of the Planning Act 2008, which enable a development consent order to provide for the compulsory suspension, extinguishment or interference with interests in or rights over land. This article is precedented, for example by the Hornsea Four Offshore Wind Farm Order 2023.
- 4.5.12 In paragraph (5), reference is made to section 152 of the 2008 Act to make it clear that compensation is payable and that such compensation would be payable under this section of the 2008 Act rather than the Compulsory Purchase Act 1965.
- 4.5.13 Article 28 (*Acquisition of subsoil only*) permits the Undertaker to acquire only the subsoil of land which is to be compulsorily acquired (either pursuant to article 21 or 24) and gives the Undertaker the ability to minimise the extent of interests acquired from owners. This article is appropriate in the context of cables or pipes to be laid underground as part of the Authorised Development, where acquisition of the 'entire' freehold may not be required. This is a model provision.

- 4.5.14 Article 29 (*Modification of Part 1 of the Compulsory Purchase Act 1965*) modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects changes introduced by the Housing and Planning Act 2016 and by the Levelling Up and Regeneration Act 2023. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order. These modifications have broad precedent in the Hornsea Three Offshore Wind Farm Order 2020, the Hornsea Four Offshore Wind Farm Order 2023, the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024, and the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.
- 4.5.15 Article 30 (*Rights under or over streets*) is a model provision which allows the Undertaker to enter on and appropriate interests within streets where required for the purpose of the Authorised Development without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances.
- 4.5.16 Article 31 (*Temporary use of land for carrying out the authorised development*) allows two categories of land to be temporarily used for the carrying out of the Authorised Development. These are:
- The land specified in Schedule 7 of the Order for the purposes specified in that Schedule;
 - Any other Order land where no notice of entry or general vesting declaration has been served.
- 4.5.17 In addition to the ability to enter on and take temporary possession of Order land Article 31(1)(b)-(g) stipulate various activities that can be undertaken pursuant to the Article. This list has been modified from the model provision to stipulate project specific activities (e.g. removal of agricultural plant).

4.5.18 Paragraph (8) provides that the Undertaker may not compulsorily acquire any of the land specified in Schedule 7, except that the Undertaker may acquire new rights or impose new restrictive covenants where that land is also specified in Schedule 7 of the Order and it may acquire rights in the subsoil.

4.5.19 There is a limit on the length of time that the Undertaker can use land under this article, being a period of 1 year beginning on the day of completion of that part of the Authorised Development for the land listed in Schedule 7. For any other Order Land, the power can be used until the end of the same period unless the Undertaker has already served a notice of entry or general vesting declaration.

4.5.20 In addition, the article includes several other provisions, including:

- The Undertaker must provide at least 28 days' notice to the relevant owner/occupiers' before entering the land;
- Before giving up occupation of land the Undertaker must remove the temporary works and restore the land to the reasonable satisfaction of the owner. The model provision has been modified to specify certain operations that are not required to be removed. This approach is specific to the Authorised Development and is necessitated by the Authorised Development; and
- Compensation provisions are included to compensate owners/occupiers affected by their land being temporarily used for carrying out the Authorised Development.

4.5.21 Paragraph (12) provides that the special category land is temporarily discharged from rights, trusts and incidents so far as those are inconsistent with the exercise of the powers under Article 31, and only for the period during which those powers are being exercised.

4.5.22 A similar provision is made in article 32 (*Temporary use of land for maintaining the Authorised Development*) for the temporary use of land for maintenance of the Authorised Development. The maintenance period in which the power can be exercised means the period during which the Authorised Development is in operation after construction and commissioning is complete. Article 32 allows an Undertaker to take temporary possession of land within the Order limits if it is reasonably required to maintain the Authorised Development and it also allows temporary works and buildings to be constructed if reasonably necessary. The power is limited and cannot be exercised in respect of a house or any other building where it is occupied.

4.5.23 There are several provisions that apply:

- The Undertaker must provide at least 28 days' notice to the relevant owner/occupier before taking temporary possession;
- The Undertaker may only retain possession for as long as is reasonably necessary to carry out the maintenance;
- When returning the land after the temporary possession the Undertaker must remove temporary works and restore the land to the reasonable satisfaction of the owners;
- Compensation provisions are included to compensate owner/occupies affected by their land being temporarily used for the maintenance of the Authorised Development.

4.5.24 Paragraph (12) provides that the special category land is temporarily discharged from rights, trusts and incidents so far as those are inconsistent with the exercise of the powers under Article 32, and only for the period during which those powers are being exercised. Both articles 31 and 32 allow a more proportionate approach to the extent of land acquisition under Part 5 of the Order.

- 4.5.25 Article 33 (*Statutory undertakers*) is based on the model provision subject to some amendments and it provides for the acquisition of land belonging to statutory undertakers that is identified in the Book of Reference (Document Reference: 6.3). This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. This article is subject to the protective provisions (see article 47 below) included at Schedule 14 to the Order. This article has precedent in a number of made Orders, for example, in the A303 (Amesbury to Berwick Down) Development Consent Order 2023 and in the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024, and is necessary to ensure the timely delivery of the Authorised Development.
- 4.5.26 Article 34 (*Recovery of costs of new connections*) provides that persons who have to create a new connection following the exercise of powers under Article 33 may recover the costs of new connections from the Undertaker. This is a model provision.

4.6 Part 6 (Operations)

- 4.6.1 Article 35 (*Operation of generating station*) permits the operation and use of the offshore wind turbine generating station comprised in the Authorised Development. Article 35(2) specifically preserves the need for the undertaker to obtain any other operational consent that may be needed, in addition to the Order.
- 4.6.2 Article 36 (*Deemed marine licences under the 2009 Act*) grants the deemed marine licences included in Schedule 8 (deemed marine licence under the 2009 Act – generation assets), Schedule 9 (deemed marine licence under the 2009 Act - transmission assets), and Schedule 10 (deemed marine licence under the 2009 Act – transmission assets – offshore converter station). The deemed consent is provided for under 149A of the 2008 Act and under section

65 of the Marine and Coastal Access Act 2009, the successor provision to section 34 of the Coast Protection Act 1949.

4.7 Part 7 (Miscellaneous and general)

- 4.7.1 Article 37 (*Application of landlord and tenant law*) is a model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the Authorised Development or the right to operate the same or any agreement entered into by the Undertaker for the construction, maintenance, use or operation of the Authorised Development.
- 4.7.2 Article 38 (*Operational land for purposes of the 1990 Act*) is a model provision which has the effect of ensuring that the land on which the Authorised Development is constructed will be "operational land" under section 263 of the 1990 Act. The effect is to ensure that planning rights attaching to the undertaker in relation to operational land have effect as they would do if planning permission had been granted for the authorised development.
- 4.7.3 Article 39 (*Felling or lopping of trees and removal of hedgerows*) provides that the Undertaker may fell or lop or cut back the roots of any tree which is not subject to a tree preservation order or shrub to prevent it obstructing or interfering with the construction, maintenance or operation of the Authorised Development. Compensation is provided for if loss or damage is caused. The article is consistent with the model provision, except the Undertaker has further limited the power so that it does not apply to trees subject to a tree preservation order which are subject to article 40 (see below).
- 4.7.4 Paragraph (2) provides the power for the Undertaker to remove the hedgerows and important hedgerows listed in Schedule 11 to the extent and for the purposes specified in that Schedule. This Article is not part of the model provisions, but is preceded in the Hornsea Three Offshore Wind Farm Order 2020, the Norfolk Vanguard Offshore Wind Farm Order 2020, the

Norfolk Boreas Offshore Wind Farm Order 2021, the East Anglia ONE North Offshore Wind Farm Order 2022, the Hornsea Four Offshore Wind Farm Order 2023, the Awel y Môr Offshore Wind Farm Order 2023, and the Sheringham and Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.

- 4.7.5 Article 40 (*Trees subject to tree preservation orders*) provides that the Undertaker may fell or lop or cut back the roots of any tree which is subject to a tree preservation order or shrub to prevent it obstructing or interfering with onshore site preparation works, the construction, maintenance or operation of the Authorised Development. The Undertaker must avoid unnecessary damage and pay compensation if loss or damage is caused.
- 4.7.6 This Article is a model provision save for that the Article applies generally to any tree subject to a tree preservation order made before and after the date of the Order coming into effect and either within or overhanging the Order limits. This approach has precedent in the Hornsea Four Offshore Wind Farm Order 2023 and the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.
- 4.7.7 Article 41 (*Certification of plans and documents, etc.*) is based on a model provision which provides for the submission of the various documents referred to in the Order (such as the Book of Reference, plans and ES) to the SoS so that they can be certified as being true copies. A list of the documents to be certified is set out in Schedule 12.
- 4.7.8 Article 42 (*Arbitration*) is an arbitration provision and is a departure from the model provision, but is preceded in Hornsea Three Offshore Wind Farm Order 2020, the Norfolk Vanguard Offshore Wind Farm Order 2020, the Norfolk Boreas Offshore Wind Farm Order 2021, the East Anglia ONE North Offshore Wind Farm Order 2022, the Hornsea Four Offshore Wind Farm Order 2023, and the Awel y Môr Offshore Wind Farm Order 2023. It is considered that this approach will provide greater certainty to all parties involved in the process and is preferential to the approach adopted in the model provisions.

- 4.7.9 The article provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. The arbitrator will be appointed by the parties within 14 days of receipt of a notice of arbitration or failing agreement within this time period then by the SoS following application by one of the parties. Arbitration will not apply to consents or approval from the Secretary of State or the Marine Management Organisation.
- 4.7.10 This Article applies Schedule 13 of the Order which sets out further detail of the arbitration process. The detail of Schedule 13 is set out below.
- 4.7.11 Article 43 (*Requirements, appeals, etc.*) has the effect of providing that section 78 of the 1990 Act applies to the discharge of requirements included in Schedule 1 of the Order, except as modified to provide for appeals being made to the SoS. This means that the Undertaker has a right of appeal to the SoS if an application is made to discharge a requirement and that application is refused or not determined.
- 4.7.12 Article 44 (*Abatement of works abandoned or decayed*) is intended to make sure that the Undertaker will not abandon or allow to fall into decay Work Nos. 1, 2, 3, 4A, or 4B. It provides a power which enables the SoS, following consultation with the Undertaker, to serve notice on the Undertaker requiring it, at its own expense, to remove or restore those works. Section 105 of the Energy Act 2004 makes provision for the SoS being able to serve notice on the Undertaker requiring it to submit a decommissioning programme for approval. The provisions of this article do not cut across this statutory provision but supplement it.
- 4.7.13 Article 45 (*Saving provisions for Trinity House*). This is a model provision for harbours and is commonly used in DCOs for offshore wind farm turbine generating stations. It is intended to provide protection to Trinity House.

4.7.14 Article 46 (*Crown rights*) is not a model provision, but it reflects the terms of section 135 of the 2008 Act and is also precedented. It has been used in many made orders, including the Hornsea Three Offshore Wind Farm Order 2020, the Norfolk Vanguard Offshore Wind Farm Order 2020, the Norfolk Boreas Offshore Wind Farm Order 2021, the Hornsea Four Offshore Wind Farm Order 2023, the Awel y Môr Offshore Wind Farm Order 2023, and the Sheringham and Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024..

4.7.15 The intention of the article is to protect the Crown in respect of its land and interests, both when it holds the land or where it is held by another person (such as a government department). In particular, it provides that nothing in the Order authorises the undertaker (or a lessee or licensee of the undertaker) to interfere with any land or rights in that land as follows:

- Where it belongs to His Majesty in right of the Crown and forms part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- Where it belongs to His Majesty in right of the Crown, but does not form part of the Crown Estate without the consent in writing of the government department that is managing that land; or
- Where it belongs to a government department or is held in trust for His Majesty for the purposes of a government department without the consent of that government department.

4.7.16 Paragraph (2) provides that the prohibition in paragraph (1) of the Article does not apply where it is proposed to compulsory acquire an interest in Crown land which is held by a person which is not His Majesty in right of the Crown or it is not being held on the Crown's behalf provided consent is provided in writing by the appropriate Crown authority.

4.7.17 Article 47 (*Protective provisions*) provides for Schedule 14, which protects the interests of certain statutory undertakers, to have effect.

- 4.7.18 Article 48 (*Funding*) provides that the Undertaker may not exercise a number of powers prior to it putting into place a guarantee equal to liabilities upon the Undertaker to pay compensation under the relevant provisions (such sum to be approved by the SoS) or an alternative form of security approved by the SoS.
- 4.7.19 The relevant powers are article 21 (compulsory acquisition of land), article 24 (compulsory acquisition of rights), article 25 (private rights), article 28 (acquisition of subsoil only), article 30 (rights under or over streets), article 31 (temporary use of land for carrying out the Authorised Development), article 32 (temporary use of land for maintaining the Authorised Development) and article 33 (statutory undertakers).
- 4.7.20 The article provides that the funding guarantee or alternative form of security must be in a form which enables a person entitled to compensation to be able enforce the said guarantee or alternative form of security. The guarantee/alternative form of security is required to be in place for a maximum of 15 years from the date that the relevant power has been exercised.
- 4.7.21 Article 49 (*No double recovery*) provides that compensation is not payable in respect of the same matter arising under both the Order and any other enactment, contract or rule of law or under two or more different provisions of this order. This article is not provided for in the Model Provisions but has been included in granted orders (see article 40 of the Port of Tilbury (Expansion) Order 2019). This article reflects the established position that a claimant in a compulsory purchase matter shall be compensated for no more than their loss.
- 4.7.22 Article 50 (*Service of notices*) governs how any notices that may be served under the Order are deemed to have been served properly. In particular, it allows service by email with the consent of the recipient and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the Act only apply to notices served under the Act itself and do not apply to notices

served under the Order. This article is preceded in, for example, the Hornsea Three Offshore Wind Farm Order 2020, the Hornsea Four Offshore Wind Farm Order 2023, the Awel y Môr Offshore Wind Farm Order 2023, and the Sheringham and Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.

4.7.23 Article 51 (*Compensation provisions*) applies Schedule 15 which contains provisions on compensation to protect the coherence of the National Site Network.

5. SCHEDULES

5.1.1 Schedule 1 describes the Authorised Development in detail, split into 'work numbers', each of which represents different elements of the Authorised Development. This split of the Authorised Development between different work numbers enables the Order to refer to different parts of the Authorised Development by citing the relevant work number. Part 1 sets out the work numbers for the Authorised Development, and Part 2 sets out the Ancillary Works.

5.1.2 The works set out in Schedule 1 to the Order are explained in section 1.4 above.

5.2 Schedule 1 – Part 3 (*Requirements*)

5.2.1 This part of Schedule 1 sets out the Requirements which apply to the carrying out of and operation of the Authorised Development under the Order.

5.2.2 The Requirements closely relate to the mitigation set out in the ES (Document Reference: 3.1) and a number of them specifically refer to the ES in order to ensure that the mitigation or other measures outlined in those documents are secured.

5.2.3 Many of the Requirements require submission of details for approval to the Relevant Planning Authorities. Those Requirements are drafted with a view to enabling the Undertaker to obtain approval for part of the Authorised Development and not require it to discharge the Requirement for the whole of the Authorised Development where this approach has been taken. This approach permits an appropriately flexible approach to the discharge of requirements by the Undertaker. This provides an appropriate balance between development not starting until details are approved and allowing other

parts of the Authorised Development (where details are already approved) to be constructed.

5.2.4 Many of the Requirements provide for a document (such as details, a method statement, a plan, a programme or scheme) specifying how the Undertaker will construct, operate or maintain the Authorised Development to be submitted for approval to the Relevant Planning Authority. The model provisions have been adapted throughout to provide that it is for the Relevant Planning Authority to approve the relevant document (rather than, as in the model provisions, the Infrastructure Planning Commission).

5.2.5 In all cases where a scheme or plan is to be submitted for approval to an approving authority there is a requirement for the Undertaker to implement the approved scheme or plan.

- Requirement 1: Time limits – This requirement is based upon the model provisions but substitutes a requirement to commence the Authorised Development within 7 years of the date of the Order coming into force. This condition is preceded in Hornsea Project Three Offshore Wind Farm Order 2020, the Hornsea Four Offshore Wind Farm Order 2023, and the Sheringham and Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.
- Requirement 2: Offshore design parameters – This requirement sets out the detailed design parameters within which the Authorised Development must be constructed. The area within which the offshore works must be located is set out in the table included in paragraph (1) of this Requirement. The relevant design parameters are shown in the table included paragraph (2) of this Requirement.
- Requirement 3: Aviation safety – The requirement sets out requirements for lighting at the scheme to be designed and constructed in accordance with relevant aviation safety requirements and as directed by the Civil

Aviation Authority. It also requires the Undertaker to notify the Defence Infrastructure Organisation Safeguarding of relevant parameters of the project prior to the commencement of offshore works.

- Requirement 4: Stages of authorised development onshore – This requires a scheme setting out the stages of construction of the development to be submitted to and approved by the Relevant Planning Authority in relation to the onshore works. Works cannot commence until the authority has approved the details of the stages.
- Requirement 5: Substation works – This requirement provides for details of the layout and design of the onshore substation (Work No. 11) to be submitted by the Undertaker to the Relevant Planning Authority for approval. These details must align with the broader details of onshore design set out in Requirement 6 and any works must be carried out in accordance with the approved details.
- Requirement 6: Detailed design parameters onshore – This requirement provides that the development must not exceed the parameters set out in the table provided at sub-paragraph (1) and set out in sub-paragraph (2), the latter of which being design requirements for air and gas insulated switch gear installed for the onshore substation.
- Requirement 7: Provision of landscaping – The Undertaker is required, before it commences the onshore substation works, to submit a written landscaping scheme and associated work programme which accords with the outline landscape and ecology management plan for approval to the Relevant Planning Authority. The Requirement stipulates what matters must be included in the landscape plan including details of proposed planting and implementation timetables. All landscaping works are required to be carried out in accordance with the approved details.

- Requirement 8: Code of construction practice – The Undertaker must submit to the Relevant Planning Authority a code of construction practice for approval any onshore works. The code of construction practice may be revised throughout the project, and any onshore works must be undertaken in accordance with the approved code.
- Requirement 9: Construction traffic management plan – No stage of onshore works is able to commence until a Construction Traffic Management Plan has been submitted to and approved by the Relevant Planning Authority.
- Requirement 10: Permanent highway accesses – Construction of any permanent means of access, or permanent alteration of an existing access, shall not be commenced by the Undertaker until it has obtained the written approval of the Relevant Planning Authority of written details of the design, layout and siting of the new or altered access. The Relevant Planning Authority’s approval must be undertaken in consultation with the highway authority.
- Requirement 11: Onshore Archaeology – The Undertaker must submit to the Relevant Planning Authority a written scheme of archaeological investigation (**‘WSI’**), in accordance with the onshore WSI, for approval, for each stage of the connection works, before that stage commences. Thereafter the scheme must be undertaken in accordance with the approved details.
- Requirement 12: Ecological management plan – An ecological management plan, which is in accordance with the outline landscape and ecology management strategy, is required to be approved for each stage of the onshore works prior to that stage commencing. The ecological management plan is to be approved by the Relevant Planning Authority. Pre-commencement works must be carried out in accordance with the

relevant details within the outline landscape and ecology management strategy certified by the SoS.

- Requirement 13 – Soil Management Plan – No stage of the onshore works can commence until a soil management plan, in accordance with the measures set out in the code of construction practice, has been submitted to and approved by the Relevant Planning Authority. The stages of onshore works must be carried out in accordance with the approved plan(s).
- Requirement 14: European protected species: onshore – Prior to any stage of the onshore works (other than surveying and investigation related to this requirement) commencing a final pre-construction survey must be undertaken to establish whether any European protected species are present on the affected land or in any of the trees to be lopped or felled. If the pre-construction surveys identify any European protected species, then the relevant part of the onshore works cannot commence until the Relevant Planning Authority has approved a scheme of protection and mitigation measures or a European protected species licence has been granted. The onshore works cannot be carried out until the scheme of protection has been approved by the Relevant Planning Authority.
- Requirement 15: Groundwater monitoring – No stage of the authorised development may be commenced until a scheme of investigation of hydraulic connectivity of groundwater supplying private water supplies has been submitted to and approved by the Relevant Planning Authority.
- Requirement 16: Restoration of land used temporarily for construction – Any onshore land within the Order limits which is used temporarily for construction and not incorporated in the permanent works or approved landscaping must be reinstated within 12 months of completion of the relevant stage of works, unless provided for in Requirement 20 (see below).

- Requirement 17: Control of noise during operational phase – This requirement sets out various standards in respect of noise, which includes maximum noise rating levels for Work No. 11 (the onshore substation) and associated measurement requirements for those levels. It also requires the preparation and submission of a noise investigation protocol to the Relevant Planning Authority prior to the commencement and operation of the onshore substation.
- Requirement 18: Skills and Employment Plan – Prior to commencement of any stage of the Authorised Development, a skills and employment plan which is substantially in accordance with the outline skills and employment plan must be submitted to and approved by the Relevant Planning Authority. The approved skills and employment strategy must be implemented as approved.
- Requirement 19: Onshore build options – This Undertaker may only commence or exercise powers of compulsory acquisition in relation to the onshore Build Options 1, 2A and 2B, presented in the application. The Undertaker must not commence onshore works nor exercise powers of compulsory acquisition until it has notified the Relevant Planning Authority which of the Build Options it intends to commence.
- Requirements 20: Reuse of temporary works within the onshore works for Five Estuaries – This Requirement enables the Undertaker to reuse any temporary works which have already been constructed pursuant to the development consent order for the Five Estuaries. This reuse requires the Undertaker to submit a scheme with details of the temporary works to be reused and a timetable for their reuse to the Relevant Planning Authority for approval. Sub-paragraph (3) provides for similar reuse of temporary works constructed for the Authorised Development by Five Estuaries, and provides that if such reuse is undertaken by Five Estuaries then the

Undertaker is not required to maintain, restore or reinstate any such temporary works.

- Requirement 21: Biodiversity net gain – The requirement stipulates that none of the onshore works may commence until a biodiversity net gain assessment has been submitted and approved by the Relevant Planning Authority. Once approved the scheme must be implemented as approved.
- Requirement 22: Operational Drainage Plan – This requirement stipulates that no part of the works relating to the onshore substation or its compounds (Work Nos. 11 and 12) may commence until an operational drainage plan has been submitted to and approved by the Relevant Planning Authority. This plan must be in accordance with the outline operational drainage plan, and must be implemented as approved.
- Requirement 23: Horizontal directional drilling method statement – None of the works requiring horizontal directional drilling (Work Nos. 4B, 4C, 4D, 6 or 12) can commence until a horizontal directional drilling method statement and contingency plan for the relevant Work No. has been submitted to and approved by the Relevant Planning Authority. This plan must be in accordance with the outline horizontal directional drilling method statement and contingency plan.
- Requirement 24: Public rights of way – No stage of the onshore works can commence until a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the streets, access and rights of way plans for the relevant works has been submitted to and approved by the Relevant Planning Authority. Said plan must be substantially in accordance with the outline public rights of way management plan and must be implemented as approved.
- Requirement 25: Offshore decommissioning – No offshore works can commence until a written decommissioning programme has been

submitted to the Secretary of State for approval pursuant to section 105(2) of the 2004 Act.

- Requirement 26: Onshore decommissioning – At least six months prior to decommissioning of the onshore works there is a requirement for the Undertaker to submit a written scheme for decommissioning to the Relevant Planning Authority for approval. The Undertaker must implement the written scheme as approved.
- Requirement 27: Requirement for written approval – This requirement confirms where the approval of a party is required that it must be in writing.
- Requirement 28: Amendments to approved details – This requirement allows details which have been submitted and approved under the Schedule to include any subsequent amendments approved by the Relevant Planning Authority, Secretary of State or other relevant person.
- Requirement 29: Obstacle free zone for navigational safety – This requirement provides that no wind turbine generator or offshore platform may be erected within the area set out by the co-ordinates in the table in sub-paragraph (3), unless the Maritime and Coastguard Agency (MCA) provides its approval. This requirement is included as shipping and navigation mitigation, subject to detailed design. Sub-paragraph (2) provides that any infrastructure installed within that area must be in accordance with the approval of the MCA.

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

- 5.3.1 This part provides a clear procedure for the relevant body discharging a requirement. It sets out clear time limits for decisions to be made and makes provision for circumstances where the discharging body requires further information to be provided in relation to an application for the discharge of a requirement.

5.3.2 Part 4 of Schedule 1 also includes an appeals process in respect of discharge, broadly in line with a number of DCOs made to date, including the Hornsea Four Offshore Wind Farm 2023 and the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024.

5.4 Schedules 2 - 9

5.4.1 Schedule 2 (*Streets and public rights of way subject to street works*) sets out the streets and public rights of way that would be subject to street works (including reference to the extent of the relevant street or public right of way as shown on the relevant plan).

5.4.2 Schedule 3 (*Traffic regulation*) sets out the streets and public rights of way to be temporarily closed, restricted and/or diverted (Parts 1 and 2). It references the street and the extent of the street that may be closed or its use restricted. Part 3 of this Schedule sets out the speed limits and the extent of the streets to which these speed limits will apply, for the purposes of Article 14.

5.4.3 Schedule 4 (*Access to works*) sets out those accesses that will be created to carry out the Authorised Development.

5.4.4 Schedule 5 (*Land in which only new rights etc. may be acquired*) specifies both the areas of land in which only new rights may be acquired by the Undertaker and the nature of the rights that may be acquired.

5.4.5 Schedule 6 (*Modification of compensation and compulsory purchase enactments for creation of new rights*) modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. This has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016.

5.4.6 Schedule 7 (*Land of which temporary possession may be taken*) sets out the land of which only temporary possession may be taken, pursuant to Article 31.

5.4.7 Schedules 8, 9 and 10 (*Deemed Marine Licences*) set out the marine licences referred to in article 36, which would be deemed to be granted for works comprised in the Authorised Development.

5.4.8 Schedule 8 includes the Deemed Marine Licence for Generation assets. The model provisions do not include a draft marine licence, but a standard structure has been developed by previous applications for development consent for offshore wind farms. The Applicant has adopted a similar approach for the Authorised Development.

Part 1 – Licenced activities

- Paragraph 1 (*Interpretation*) – provides the definition and interpretation of key terms used in the licence. Many of the terms included in this paragraph are identical to the terms in Article 2 of the Order.
- Paragraphs 2 to 4 (*Details of licenced marine activities*) - provides details of the licensable marine activities as they relate to the generation assets, both in terms of construction as well as operation. It replicates the description of the Authorised Development in Schedule 1 of the Order and it also describes the substances that may be disposed of as part of construction of the Authorised Development.
- Paragraph 5 sets out the grid co-ordinates for the Authorised Development comprising Work No.1.
- Paragraph 6 confirms that the deemed marine licence remains in force until the Authorised Development has been decommissioned.
- Paragraph 7 confirms that the provisions of section 72(7) and 72(8) of the 2009 Act do not apply to any transfer of the deemed marine licence unless it is a transfer not falling within Article 5 of the Order. This is necessary to

ensure that there is no conflict between the operation of Article 5 of the Order and Section 72(7) and 72(8) of the 2009 Act.

- Paragraph 8 confirms that where any licenced activity is to be undertaken in accordance with a plan, protocol or statement approved under the licence, the approved details will include any amendments approved by the MMO.
- Paragraph 9 confirms that any amendments made to any approved details must be in accordance with the principles and assessments set out in the Environmental Statement.

Part 2 – Conditions

- Conditions 10 and 11 (*Design parameters*) repeat the design parameters included in Schedule 1, Part 3 of this Order.
- Condition 12 (*Maintenance of the authorised development*) confirms that the Undertaker may maintain the Authorised Development except where the terms of the licence provides otherwise. All maintenance works must have been assessed in the Environmental Statement, and must be carried out in accordance with an operation and maintenance plan prepared substantially in accordance with the outline offshore operations and maintenance plan.
- Condition 13 (*Vessels under the undertaker's control*) – provides for a code of conduct to be issued to vessels under its control which are operating within the Order Limits which shall ensure co-ordination to avoid collision risk.
- Condition 14 (*Extension of time periods*) – confirms that any time period for either the MMO or the Undertaker may be extended with the agreement of the other party.

- Condition 15 (*Notifications and inspections*) – provides for a procedure of supplying copies of the licence to agents and contractors, restricting the use of the licence to contractors and vessels notified to the MMO and publicising commencement of the licenced activities.
- Condition 16 (*Aids to Navigation*) – provides for various matters in respect of aids to navigation including the requirement to maintain navigation aids and a procedure to be followed where an aid to navigation fails. There is also a requirement to provide notice to mariners and notification of the progress of works to Trinity House.
- Condition 17 (*Colouring of structures*) – sets structures to be coloured yellow from highest astronomical tide to a height to be directed by Trinity House and for wind turbine generators to be coloured light grey.
- Condition 18 (*Aviation safety*) – requires the Undertaker to notify the Defence Infrastructure Organisation Safeguarding regarding the construction and dimensions of the Authorised Development, and includes various requirements in respect of the lighting, heights and other details of the activities for the purposes of civil aviation safety.
- Condition 19 (*Chemicals, drilling and debris*) - sets standards that must be met by the Undertaker in respect of the chemicals and other substances that can be used and how they can be stored, transported and where they can be disposed of. There are also provisions relating to chemicals and other substances that cannot be disposed of and a procedure to be followed should objects be dropped unintentionally.
- Condition 20 (*Force majeure*) – provides for deposits during an emergency situation and the requirement for the Undertaker, at its own cost, to recover that deposit.

- Conditions 21 and 22 (*Pre-construction plans and documentation*) – provides a requirement for the Undertaker to obtain the approval, before the commencement of licenced activities, of a range of documentation. The documentation listed in paragraph (1) of Condition 21 includes a design plan, construction programme, construction method statement, construction project environment management and monitoring plan, scour protection plan, pre-construction monitoring surveys, piling marine mammal mitigation protocol, cable specification and installation plan, lighting and marking plan, offshore monitoring plain, a fisheries liaison and co-existence plan, and a marine traffic monitoring plan.
- Paragraph (2) includes a requirement to submit a written scheme of archaeological investigation, paragraph (3) requires works involving intrusive seabed works to have a specific outline written scheme of investigation. Paragraph (4) states that where driven or part driven pile foundations are used the hammer energy must not exceed 6,000kJ for monopile foundations and 3,000kJ for pin pile foundations. Paragraph (5) sets out that no more than two vessels may be engaged at any time in piling, and that no more than two piles may be piled within a 24-hour period. The remaining paragraphs set out processes for submitting and gaining approvals for the various plans and documents.
- Condition 22 stipulates time scales for the submission of the relevant programmes, plans, protocols or schemes and the time period in which they should be determined by the MMO.
- Condition 23 (*Offshore safety management*) requires confirmation by the MMO, in consultation with the MCA, that it is satisfied the undertaker has taken into account and addressed all MCA recommendations in respect of safety and emergency response and provides that no part of the authorised scheme can commence until it this has occurred.

- Condition 24 (*Reporting of engaged agents, contractors and vessels*) requires the Undertaker to provide the MMO details of agents and contractors engaged in licenced activities.
- Condition 25 (*Pre-construction monitoring and surveys*) – requires the Undertaker to submit a monitoring plan or plans in accordance with the outline offshore in principle monitoring plan for approval by the MMO. The condition sets out what must be included within the monitoring plan. Paragraphs (2) to (5) provide details of surveys required for the pre-construction phase, including a high-resolution swath bathymetric survey, biogenic or biogenic reef features survey, navigation risk assessments, and archaeological exclusion zone identification.
- Condition 26 (*Construction monitoring*) – requires the Undertaker to submit a construction monitoring plan or plans in accordance with the outline offshore in-principle monitoring plan for approval by the MMO. The monitoring plan or plans must include details of construction monitoring, including piling noise monitoring for the first four piled foundations of each piled foundation type and vessel traffic monitoring.
- Condition 27 (*Post-construction monitoring*) – requires the Undertaker to submit a post-construction monitoring plan or plans in accordance with the outline marine monitoring plan for approval by the MMO. The monitoring plan or plan must include surveys for the extent of biogenic or geogenic reef, bathymetric surveys, ornithological monitoring and vessel traffic monitoring.
- Condition 28 (*Timing of monitoring report*) – provides that monitoring reports under conditions 16, 17 and 18 must be provided to the MMO no later than four months after completion of the relevant monitoring.
- Condition 29 (*Reporting of impact pile driving*) – places reporting obligations on the Undertaker with the Marine Noise Registry in the event

of driven or part driven foundations are employed, or explosives proposed to be used.

- Condition 30 (*Maintenance reporting*) – requires an annual maintenance report to be submitted to the MMO with a record of licenced activities for the preceding year, and a review in a consolidated report every five years.
- Condition 31 (*Stages of construction*) – requires a written scheme outlining the stages of construction of the offshore elements of the Authorised Development to be approved by the MMO.
- Conditions 32 and 33 (*Completion of construction*). Condition 32 requires the Undertaker to submit a close out report to the MMO and the statutory nature conservation body within three months of the completion of construction confirming the final number of installed turbines and the turbine generator parameters relevant to collision risk modelling. Thereafter no further construction activities can be undertaken under the licence.
- Condition 33 (*Completion of construction*) requires the Undertaker to submit a close out report to the MCA and the UK Hydrographic Office within three months of completion of construction relating to the final number of installed turbines and the location of installed turbines and accommodation platform.
- Condition 34 (*Deployment of cable protection*) – requires the Undertaker to deploy any cable protection authorised under the deemed marine licence within 10 years from the grant of the Order.

5.4.9 Schedule 9 includes the deemed marine licence for transmission assets, and Schedule 10 includes the deemed marine licence for the offshore converter station element of the transmission assets, should that infrastructure be

required. These largely duplicate the provisions of the deemed marine licence for the generation assets in Schedule 8 of the Order.

5.4.10 Schedule 11 (*Hedgerows*) sets out the hedgerows that may be removed pursuant to article 39, and the extent and purpose for this removal.

5.4.11 Schedule 12 (*Documents to be certified*) – This schedule is referred to in Article 41 and provides a list of the documents to be certified by the Secretary of State as true copies. It is split into three parts comprising the documents forming part of the environmental statement to be certified (Part 1), examination documents forming part of the environmental statement to be certified (Part 2) and other documents to be certified (Part 3).

5.4.12 Schedule 13 (*Arbitration rules*) – This schedule sets out the process for arbitration as referred to in Article 42.

5.4.13 This Schedule refers to the person who commenced the arbitration as the Claimant and the other party as the Respondent. The timetable for the process is as follows:

- Within 15 working days of the Arbitrator being appointed the Claimant shall serve on the Respondent and the Arbitrator a statement of case and all supporting evidence to support the claim.
- Within 15 working days of receipt of the Claimant's statement of case and supporting evidence the Respondent will serve a statement of defence and all supporting evidence to support its defence, together with any objections to the Claimant's documentation.
- Within 5 working days of receipt of the Respondent's documentation the Claimant may make a Statement of Reply.

5.4.14 The costs of the arbitration will be awarded by the arbitrator on the principle that each party will bear its own costs unless either party behaved

unreasonably. Costs will include the arbitrator's costs together with the reasonable legal fees and other costs incurred by the other party.

5.4.15 Schedule 14 (*Protective provisions*) sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the Authorised Development. The undertaker has engaged with relevant statutory undertakers and will continue to do so following submission of the Application with a view to agreeing bespoke protective provisions for inclusion in the Order:

- Parts 1 and 2 set out general protective provisions for the benefit of electricity, gas, water and sewerage undertakers and for the protection of the electronic communications code network. These are standard protections and apply to protect undertakers who are content not to seek bespoke protective provisions.
- Part 3 includes protective provisions for the benefit of the Environment Agency. These protective provisions are subject to ongoing negotiations with the Environment Agency.
- Part 4 provides protective provisions for the protection of drainage authorities. These protective provisions are subject to ongoing negotiations with the relevant drainage authorities.
- Part 5 includes protective provisions for the benefit of Network Rail. These protective provisions are subject to ongoing negotiations with Network Rail.
- Part 6 includes protective provisions for the benefit of National Highways. These protective provisions are subject to ongoing negotiations with National Highways.
- Part 7 includes protective provisions for the benefit of London Gateway Port. These protective provisions are subject to ongoing negotiations with London Gateway Port.

- Part 8 includes protective provisions for the benefit of the undertaker in the Five Estuaries Offshore Wind Farm to address the overlapping order limits and ensure that both projects can co-exist. These protective provisions have been agreed with Five Estuaries.

5.4.16 Schedule 15 (*Compensation to protect the coherence of the national site network*) secures compensatory measures to ensure the overall coherence of the national site network as regards Lesser Black Backed Gulls. The Schedule secures the submission and approval of a compensation, implementation and monitoring plan, which is to be in accordance with the outline compensation, implementation and monitoring plan as certified, unless otherwise approved by the Secretary of State.



NORTH FALLS

Offshore Wind Farm



HARNESSING THE POWER OF NORTH SEA WIND

North Falls Offshore Wind Farm Ltd

A joint venture company owned equally by SSE Renewables and RWE.

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Registered in England and Wales Company Number: 12435947