

MONA OFFSHORE WIND PROJECT

Explanatory Memorandum

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Image of an offshore wind farm

MONA OFFSHORE WIND PROJECT

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1. Explanatory Memorandum

1.1 Summary and introduction

1.1.1.1 This memorandum explains the purpose and effect of each article of, and Schedule to, the draft Mona Offshore Wind Farm Order (the "Order"), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the "APFP Regulations").

1.1.1.2 Regulation 5(2)(c) of the APFP Regulations requires explanatory memoranda to explain "*the purpose and effect of provisions in the draft order*".

1.2 Purpose and The Order

1.2.1.1 Mona Offshore Wind Limited (incorporated under company number 13497266 and having its registered office at Chertsey Road, Sunbury on Thames, Middlesex, United Kingdom, TW16 7BP) (the "undertaker") is applying to the Secretary of State for a development consent order (the "Application") for the construction, operation and decommissioning of an offshore wind power generating station and related associated development (the "authorised development").

1.2.1.2 The authorised development and ancillary works (together the "authorised project") are described in Part 1 (authorised development) of Schedule 1 of the Order. See also article 2 (interpretation).

1.2.1.3 The Mona Array Area is located in the east Irish Sea, 28.8 km (15.6 nm) from the north coast of Wales, 46.5 km (25.1 nm) from the northwest coast of England, and 46.5 km (25.1 nm) from the Isle of Man (when measured from mean high water springs). The electricity cables will come ashore at landfall at Llandulas from where they will be installed to the new Mona substation which will connect into the National Grid substation at Bodelwyddan.

1.2.1.4 A detailed description of the authorised project is included in Volume 1, Chapter 3: Project description of the Environmental Statement (document reference F1.3).

1.2.1.5 The Order also seeks to confer upon the undertaker powers of compulsory acquisition of land or rights over land which are required for the onshore elements of the authorised project or to facilitate them, or that are incidental to them within the meaning of section 122 of the Planning Act 2008 (the "2008 Act").

1.2.1.6 As the Order seeks to apply and modify statutory provisions under section 120(5) of the 2008 Act including in relation to drainage, hedgerows and the compulsory acquisition of land, it has been drafted as a statutory instrument as required under section 117(4) of the 2008 Act.

Nationally Significant Infrastructure Project

1.2.1.7 The authorised development is a nationally significant infrastructure project ("NSIP") within sections 14(1)(a) and 15(3B) of the 2008 Act. Under section 15(3B) a generating station is an NSIP if:

- it is in waters in or adjacent to Wales up to the seaward limits of the territorial sea, or in the Welsh zone; and
- its capacity is more than 350 megawatts (MW).

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- 1.2.1.8 The Mona Offshore Wind Project will be located in Welsh offshore waters (beyond 12 nautical miles (nm) from the Welsh coast) and inshore waters, with the onshore infrastructure located wholly within Wales. As its capacity will be more than 350MW it accordingly falls within section 15(3B).
- 1.2.1.9 As the Mona Offshore Wind Project is an NSIP, development consent must be obtained from the Secretary of State to authorise it, and an application for a development consent order must be made to the Secretary of State, care of the Planning Inspectorate, under section 37 of the 2008 Act.
- 1.2.1.10 Schedule 1 (Authorised development) to the Order contains a list of numbered works comprising the authorised development.

Associated development

- 1.2.1.11 The Order specifically authorises development which is associated with the NSIP. The Secretary of State may, under the provisions of section 115(4A) of the 2008 Act, grant consent for development that is associated with an NSIP.
- 1.2.1.12 Guidance on associated development has been issued by the Secretary of State¹. Paragraph 5 of the Department for Communities and Local Government (DCLG – now the Department for Levelling Up, Housing and Communities) Guidance sets out core principles which must be taken into account by the Secretary of State when deciding whether or not development should be treated as associated development. In summary:
- There should be “*a direct relationship between associated development and the principal development.*”
 - “*Associated development should therefore either support the construction or operation of the principal development, or help address its impacts.*”
 - “*Associated development should not be an aim in itself but should be subordinate to the principal development.*”
- 1.2.1.13 In most cases therefore associated development will be “*typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project*” (paragraph 6, DCLG Guidance). The grid connection for a commercial power station is given as a specific example of associated development.
- 1.2.1.14 In addition, the core principles in paragraph 5 of the DCLG Guidance also states that “*Associated development should be proportionate to the nature and scale of the principal development. However, this core principle should not be read as excluding associated infrastructure development (such as a network connection) that is on a larger scale than is necessary to serve the principal development if that associated infrastructure provides capacity that is likely to be required for another major infrastructure project.*”
- 1.2.1.15 Details of associated development are set out in Part 1 of Schedule 1 and include offshore activities such as scour protection around the foundations of the offshore structures and onshore activities such as works to alter the position of apparatus, including mains, sewers, drains and cables (overhead and underground).

¹ Guidance on associated development applications for major infrastructure projects’ (Department for Communities and Local Government) (April 2013) (the DCLG Guidance)

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1.3 Ancillary Matters

- 1.3.1.1 The Order also authorises ancillary works within the Order limits. These are works that do not constitute development but are required to facilitate the construction of the authorised development.
- 1.3.1.2 Details of ancillary works are set out in Part 2 of Schedule 1 and include offshore activities such as marking buoys, temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development and onshore activities such as intrusive ground investigations including the making of boreholes and trial pits.
- 1.3.1.3 In addition to providing for the construction and operation of the authorised development, the Order will, in accordance with section 122, section 120(3) and 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 D4) sets out a description of the land and interests included in the Order. The Order and the Book of Reference should be read together with the Statement of Reasons (document reference D3) which accompanies the Application and sets out the justification for the acquisition of or interference with rights in the Order land.
- 1.3.1.4 Other ancillary matters include the application and disapplication of legislation, the power to undertake works to streets, and the ability to take temporary possession of land.

1.4 The Order

- 1.4.1.1 The purpose and effect of the provisions of the Order are explained below in sequence. The Order is based on the model provisions set out in Schedule 1 to the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the “Model Provisions”) as well as relevant precedents. Whilst the Model Provisions have been repealed, Planning Inspectorate Advice Note 13 ‘Preparing the draft Order and Explanatory Memorandum, February 2019’ explains that they were intended as a guide for developers in drafting orders, rather than a rigid structure, but aided consistency and assisted in drafting a comprehensive set of lawful provisions.
- 1.4.1.2 The Order adopts the ‘Rochdale Envelope’ approach² whereby the maximum permitted consent envelope is provided for and assessed, allowing some of the scheme detail to be approved post-consent. The approval of that detail is provided for within the Requirements in Part 1 of Schedule 2 of the Order.
- 1.4.1.3 A marine licence is required before carrying out any licensable marine activities under the Marine and Coastal Access Act 2009. The marine licence (“ML”) for activities wholly located in Welsh offshore waters will be deemed under the Order. The deemed ML will cover works related to the offshore wind farm generation infrastructure as well as the OSPs and inter-connector cables.
- 1.4.1.4 A separate, standalone ML will be required for activities in Welsh offshore and inshore waters. The standalone ML will cover the transmission assets which includes the offshore export cables, OSPs and inter-connector cables, Mona Offshore Cable Corridor and Access Areas.

² See Planning Inspectorate Advice Note 9: Rochdale Envelope (version 3)

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- 1.4.1.5 The OSPs and inter-connector cables will be included in both the deemed ML and the standalone ML as it is not known at this stage whether they will remain as generation assets or be transferred to the offshore transmission operator (“OFTO”) post-construction.
- 1.4.1.6 The Mona Offshore Wind Project is making a separate application for a marine licence to Natural Resource Wales (“NRW”) in respect of the transmission assets which will be a standalone consent. Please see the Marine Licence Principles Document (document reference J9) for further information.
- 1.4.1.7 The form of the Order has had regard to comparable precedent orders including:
- the Glyn Rhonwy Pumped Storage Generating Station Order 2017;
 - the Silvertown Tunnel Order 2018³;
 - the Port of Tilbury (Expansion) Order 2019⁴;
 - the Hornsea Three Offshore Wind Farm Order 2020⁵ (“Hornsea Three”);
 - the Norfolk Vanguard Offshore Wind Farm Order 2020⁶ (“Norfolk Vanguard”);
 - the Norfolk Boreas Offshore Wind Farm Order 2021⁷ (“Norfolk Boreas”);
 - the East Anglia One North Offshore Wind Farm Order 2022⁸ (“East Anglia One North”);
 - the East Anglia Two Offshore Wind Farm Order 2022⁹ (“East Anglia Two”);
 - the Hornsea Project Four Offshore Wind Farm Order 2023¹⁰ (“Hornsea Four”); and
 - the Awel y Môr Offshore Wind Farm Order 2023¹¹ (“Awel y Môr”);

Part 1 – Preliminary

Article 1 - Citation and commencement

- 1.4.1.8 Article 1 sets out the name of the Order and the date on which it comes into force.
- 1.4.1.9 This article did not appear in the Model Provisions. However, it is a standard article that is included in all development consent orders.

Article 2 - Interpretation

- 1.4.1.10 Article 2(1) defines the terms used in the Order. It is a standard article and was included in the Model Provisions as article 1.

³ .S.I.2018/574

⁴ .S.I.2019/359

⁵ S.I. 2020/1615

⁶ S.I. 2020/706

⁷ S.I. 2021/1414

⁸ .S.I.2022/432

⁹ .S.I.2022/433

¹⁰ .S.I.2023/800

¹¹ .S.I.2023/1033

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1.4.1.11 Definitions to note include:

- "Commence". The definition of "commence" is based on the wording used in Hornsea Four. This allows certain onshore works to be undertaken with appropriate controls in place without all of the details to be provided under requirements needing to be approved. This also specifies which activities which, if undertaken, will not constitute "commencement". Specifically, the carrying out of "onshore site preparation works" as defined in the Order will not constitute "commencement".
- "Maintain". A definition of "maintain" has been added to make clear what is authorised under article 6 (Power to maintain the authorised development), and that this does not permit the undertaker to depart from the description of the authorised development in Schedule 1 or to carry out maintenance operations which would cause different environmental effects to those identified in the Environmental Statement ("ES").
- "Order land" which means the land shown on the Land plan (onshore) which is within the limits of land to be acquired or used and described in the book of reference.
- "Order limits" which means the limits for authorised development as shown on the Works plans – onshore and Works plans – offshore and intertidal and the Offshore order limits and grid coordinates plan.
- The "undertaker" is defined as Mona Offshore Wind Limited who has the benefit of the provisions of the Order.

1.4.1.12 Article 2(2) expands the definition of rights over land in the same way as many other DCOs including Norfolk Boreas and Norfolk Vanguard, East Anglia One North, East Anglia Two, Hornsea Four and Awel y Môr. This was included in the Model Provisions as article 1(2).

1.4.1.13 Articles 2(3) and 2(4) define measurements as approximate. The purpose of this is to ensure that if upon construction of the works it transpires that the distances are marginally different to those listed in the Order, there is no issue over whether the Order permits the works. Thus this provision allows for a small tolerance, although all works will take place within the Order limits. It is now common practice to include such provision in development consent orders; the Model Provisions included similar wording in article 1(3) and similar wording is used in Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two and Awel y Môr.

1.4.1.14 Article 2(6) confirms that references to works are to the works numbered in Schedule 1.

Part 2 Principal Powers

Article 3 – Development consent etc. granted by the Order

1.4.1.15 Article 3 provides the principal power to construct and operate the authorised development described in Part 1 of Schedule 1 and ancillary works described in Part 2 of Schedule 1 within the Order limits. Together the authorised development and ancillary works form the authorised project.

1.4.1.16 Development consent is subject to the provisions of the Order, including the requirements listed in Schedule 2 and the conditions contained within the deemed marine licence in Schedule 14 and therefore all the relevant management plans secured through either the requirements or the conditions. This is based on article 2

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of the Model Provisions, with the only substantive difference being that the model article does not refer to consent being granted for ancillary works, which is the approach that is now taken in other offshore wind development consent orders including Hornsea Two, Teesside A and B, Hornsea Four, Norfolk Vanguard, Norfolk Boreas, East Anglia One North, East Anglia Two and Awel y Môr.

- 1.4.1.17 Paragraph (2) confirms the geographic extent of the onshore works and offshore works as defined in the Order.

Article 4 – Operation of generating station

- 1.4.1.18 Article 4 provides the principal power to use and operate the authorised development within the Order limits. Schedule 1 describes the authorised development. Article 4 provides authorisation for the undertaker to operate the authorised development as a generating station.

- 1.4.1.19 Article 4(2) provides that grant of development consent does not relieve the undertaker of the need to obtain any other necessary consents to operate the authorised development. This clarifies that the operator will still require to obtain, for example, an electricity generation licence under the Electricity Act 1989. A list of the other consents and licences anticipated to be required is set out in the Other Consents or Licences Required (document reference J1).

- 1.4.1.20 This article is included as standard in other development consents for offshore generating stations including Hornsea Three, Hornsea Four, Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two and Awel y Môr.

Article 5 – Deemed marine licence under the 2009 Act

- 1.4.1.21 Article 5 is the provision under which the marine licence in Schedule 14 is deemed granted. The marine licence is given for activities relating to the Mona generation assets which includes the wind turbine generators, inter-array cabling, interconnector cabling, and OSPs.

- 1.4.1.22 The Mona Offshore Wind Project is making an additional application for a marine licence to NRW in respect of the transmission assets which will be a standalone consent. Please see the Marine Licence Principles Document (document reference J9) for further information.

Article 6 – Power to maintain the authorised development

- 1.4.1.23 This article provides the undertaker with a general power to maintain the authorised development, subject to any contradictory provisions in the Order. This provision follows Model Provision 3 and article 4 of the Hornsea Three, article 5 in both of Norfolk Boreas and Norfolk Vanguard and article 4 in both East Anglia One North and East Anglia Two and article 5 of Awel y Môr.

Article 7 - Benefit of the Order

- 1.4.1.24 This article allows the benefit of the Order to be transferred or leased to others by the undertaker. This article is necessary to allow the undertaker commercial freedom to sell or lease the authorised development while ensuring that the Secretary of State can control such sale or lease through the need to obtain their consent. Without the ability to transfer the benefit, no party but the undertaker could operate the power station without committing a criminal offence. This article is therefore necessary to

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ensure that the authorised development is fundable and could be sold or leased in the future.

- 1.4.1.25 Paragraphs (1) and (2) are based on article 4 of the Model Provisions, amended to clarify that they are subject to other provisions of the article and that it is the undertaker that benefits from the provisions of the Order, rather than particular articles applying for the benefit of other specified parties as per the Model Provisions. The exercise of any transferred benefits or rights is therefore subject to the same restrictions, liabilities and obligations as would apply under the Order if those benefits or rights were exercised by the undertaker. The consent of the Secretary of State is required for a transfer or grant, except where it is made to specified categories of person. Notice must also be given in writing to NRW if the transfer or grant relates to the deemed marine licence.
- 1.4.1.26 Paragraph (3) was not included in the Model Provisions but equivalent provision has been included in offshore wind development consent orders in English waters in respect of the Marine Management Organisation (MMO) including Hornsea Four, Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two.
- 1.4.1.27 Paragraph (4) is based on article 5 of the Model Provisions. It differs in that it allows a transfer or grant to specified licence holders to take place without the Secretary of State's consent, on the basis that it is appropriate for those companies to be able to carry out those works. As these transfers are restricted to persons holding appropriate licences, such persons will already have been determined to be fit to operate such facilities.
- 1.4.1.28 The drafting of this article reflects the equivalent provision in recent development consent orders including Hornsea Four, Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two and Awel y Môr.

Article 8 - Application and modification of legislative provisions

- 1.4.1.29 This article provides for the disapplication of certain requirements which would otherwise apply under public general legislation, as well as local legislation as authorised by section 120(5)(a) of the 2008 Act (what may be included in order granting development consent). Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order.
- 1.4.1.30 Article 8(a) and (b) disapply byelaws where the carrying out of the authorised project would conflict with such byelaws.
- 1.4.1.31 Article 8(c) provides for the disapplication of consents ordinarily required in respect of the Land Drainage Act 1991. Specifically, these are the requirements for consents for the construction of culverts, together with the requirements for approval under byelaws made under the Land Drainage Act 1991. These are consents 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 in relation to these activities. These provisions were included in Norfolk Boreas and Norfolk Vanguard.
- 1.4.1.32 Article 8(d) disapplies the provisions of the Neighbourhood Planning Act 2017 (the "2017 Act") relating to the temporary possession of land. This is on the basis that the temporary possession of land is dealt with by articles 29 and 30 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. This disapplication has

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been included in a number of offshore generating station development consent orders including most recently Hornsea Four, Norfolk Boreas and Norfolk Vanguard as article 6(2), East Anglia One North and East Anglia Two.

Article 9 - Defence to proceedings in respect of statutory nuisance

- 1.4.1.33 Section 158 of the 2008 Act confers statutory authority for the purposes of a defence in civil or criminal proceedings for nuisance. This article provides a defence to proceedings brought in a magistrates' court under section 82(1) of the Environmental Protection Act 1990 (the "1990 Act") in relation to certain nuisances set out in paragraph 79(1) of that Act. The sub-paragraphs included are:
- any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
 - artificial light emitted from premises so as to be prejudicial to health or a nuisance;
 - noise emitted from premises so as to be prejudicial to health or a nuisance; and
 - noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road.
- 1.4.1.34 A broad defence to civil and criminal proceedings for nuisance is provided by section 158 of the 2008 Act. However, the view taken under the NSIP regime is that section 158 does not extend to the relatively rare situation by which if, somebody considers that the local authority ought to be tackling a nuisance using its statutory nuisance powers, but it is not, that person may apply to the magistrates' court under section 82 of the 1990 Act. Accordingly, this article is seeking to fill in a legislative gap by extending the effect of section 158.
- 1.4.1.35 As section 158 does not distinguish between different types of nuisance, the logical position is that this article should apply to all categories of nuisance. However, as a matter of practice other projects have been more discriminating and have considered whether there is any possibility of a statutory nuisance occurring, leading to specific types of nuisance being referred to. The undertaker has followed this approach by seeking to restrict the application of this article so that it only applies to nuisances that have been identified as potentially resulting from the authorised development, as set out in the Statutory Nuisance Statement (document reference J5) accompanying the application. This ensures that this article is focused only on those nuisances that may be of relevance, whilst also reflecting the logic and correct interpretation of section 158.
- 1.4.1.36 The defence is available if the nuisance relates to:
- the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to the carrying out of the authorised development in accordance with a notice served, or consent given, under the Control of Pollution Act 1974; or
 - the construction, maintenance or use of the authorised development and cannot reasonably be avoided.
- 1.4.1.37 This article is based on article 7 of the Model Provisions and recent orders including article 7 in each of Hornsea Four and Hornsea Three, East Anglia One North and East Anglia Two and article 8 in Norfolk Vanguard and Norfolk Boreas. The references to section 65 of the Control of Pollution Act 1974 are omitted because that section has been repealed.

Part 3 Streets

Article 10 – Street works

- 1.4.1.38 Article 10 allows the undertaker to interfere with and execute works in or under the streets within the Order limits for the purposes of the authorised development. The authority given by this article is a statutory right for the purposes of sections 48(3) and 51(1) of the New Roads and Street Works Act 1991 (the “1991 Act”). Certain provisions of the 1991 Act apply to works carried out under this article, subject to the provisions of article 11 (Application of the 1991 Act).
- 1.4.1.39 Article 10 is based on article 8 of the Model Provisions.

Article 11 – Application of the 1991 Act

- 1.4.1.40 Article 11 provides for the application of the 1991 Act. Although not included in the Model Provisions, there is precedent for these provisions in previous orders for example, most recently in article 9 in each of Hornsea Four and Hornsea Three, East Anglia One North and East Anglia Two and article 14 of Norfolk Vanguard and Norfolk Boreas.
- 1.4.1.41 Paragraph (4) provides that certain provisions of the 1991 Act listed in that paragraph will not apply. The disapplication of these provisions (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order and the specific provisions in the Order which regulate the carrying out of the Order works.

Article 12 – Temporary restriction of use of streets

- 1.4.1.42 This article allows for the temporary alteration, diversion or restriction of streets for the purposes of authorised development, whilst ensuring that essential pedestrian access to and from premises along that street is maintained if necessary (paragraph (3)). This power is required because it is necessary to be able to restrict the use of the street in order to allow installation of the cables and other street works required to facilitate the onshore works. Closures and traffic management will also be required to facilitate the creation or improvement of junctions. Where possible and safe, closures for access junction works will be partial only and not close the full width of the carriageway.
- 1.4.1.43 Paragraph (2) confers a power on the undertaker where a street has been temporarily stopped up under this article to use it as a temporary working site. It is not anticipated that any street would be used as a working site except when undertaking works affecting the carriageway itself.
- 1.4.1.44 Paragraph (6) provides a right to compensation for any person suffering loss due to the suspension of a private right of way under this article. The undertaker is not aware of any private rights of way in streets however this article is retained as precautionary in the case that unidentified, extant title rights to take exist along the same lines as the current public highway.
- 1.4.1.45 Paragraph (7) states that where the street authority fails to notify the undertaker of its decision in respect of an application for consent within 28 days of the application being made is deemed to have given its consent. This time limit is considered necessary to remove the possibility for delay and provide certainty that the authorised development can be delivered by the undertaker in a timely fashion. As a nationally significant

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infrastructure project, the authorised development should not be at risk of being held up due to a failure to respond to an application for consent.

- 1.4.1.46 This provision has been included in numerous previous orders including article 10 of Hornsea Three and Hornsea Four, article 12 of East Anglia One North and East Anglia Two and article 11 of Norfolk Vanguard and Norfolk Boreas.

Article 13 – Temporary stopping up of public rights of way

- 1.4.1.47 This article allows the undertaker, where it is in connection with the carrying out of the authorised development, to temporarily stop up a public right of way where it is specified in Schedule 5 of the Order to the extent stipulated in the same schedule. This article is not a model provision, but it is preceded in article 11 in each of Hornsea Three and Hornsea 4, East Anglia One North and East Anglia Two and article 10 of Norfolk Boreas and Norfolk Vanguard.

Article 14 – Access to works

- 1.4.1.48 This article allows accesses, which are either specified in Schedule 6 and shown on the street works and access to works plan or which are subject to the approval of the relevant planning authority in consultation with the highway authority, to be created within the Order limits. It is anticipated that this article will be relied on by the undertaker to provide temporary accesses as required during the construction period, with all permanent means of access (including private means of access) forming part of the authorised development. This article departs from the Model Provisions (article 12) to provide the undertaker with a general power to provide means of access should that be necessary or expedient but is preceded in previous orders including article 12 in Norfolk Boreas and Norfolk Vanguard and article 13 of East Anglia One North and East Anglia Two
- 1.4.1.49 The inclusion of this article is considered to be appropriate as it will help to 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.

Article 15 – Agreements with street authorities

- 1.4.1.50 This article allows street authorities and the undertaker to enter into agreements relating to any temporary stopping up, alteration or diversion of a street authorised by the Order, or the carrying out of works in the streets referred to in Article 10 (Street works) of the Order. This article follows the approach taken in article 13 in each of Hornsea Three and Hornsea Four, Norfolk Boreas and Norfolk Vanguard and article 14 of both East Anglia One North and East Anglia Two.

Part 4 – Supplemental powers

Article 16 - Discharge of water

- 1.4.1.51 This article sets out the circumstances in which the undertaker is entitled to discharge water into a watercourse, public sewer or drain, and its purpose is to establish statutory authority for doing so.
- 1.4.1.52 The effect of paragraph (3) is that this can only be done with the consent of the owner but the article is made subject to Part 5 of the Order in which rights (including rights to

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discharge water) can be taken compulsorily. Consent can be given subject to reasonable terms and conditions, but cannot be unreasonably withheld.

- 1.4.1.53 Paragraph (5) requires the approval of Natural Resources Wales to any works potentially affecting or within 16 meters of a main river.
- 1.4.1.54 Paragraph (6) requires the undertaker to take reasonably practicable steps to ensure that any water that is discharged is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- 1.4.1.55 This article follows article 15 of Hornsea Three and Hornsea Four.

Article 17 - Authority to survey and investigate the land

- 1.4.1.56 This article gives the undertaker the power to enter land for the purpose of surveying and investigating. It provides that the undertaker must give 14 days' notice before exercising the powers of entry. Compensation is payable for any loss or damage caused. Paragraphs (1) and (3) to (5) were included in the Model Provisions as article 16. The first part of paragraph (2) was also included in the model provisions but additional wording has been added to clarify that the notice to be served on landowners must include certain details where certain specified activities will be undertaken.
- 1.4.1.57 Paragraph (7) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the article is refused. This paragraph was included in article 16 the Silvertown Tunnel Order 2018 (Silvertown Tunnel) and article 19 of The Port of Tilbury Expansion Order 2019 (Port of Tilbury) as well as more recently in article 17 in each of Hornsea Three and Hornsea Four, East Anglia One North and East Anglia Two and article 16 of Norfolk Vanguard and Norfolk Boreas.

Article 18 – Protective work to buildings

- 1.4.1.58 The purpose of this article is to allow the undertaker to undertake protective works to buildings affected by the authorised development. It was included in the Model Provisions as article 15 and is a standard provision that is often included in DCOs.

Article 19 - Removal of human remains

- 1.4.1.59 This article 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.
- 1.4.1.60 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. 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 19 follows the Model Provision 17 and was included in article 28 of the Glyn Rhonwy Pumped Storage Generating Station Order 2017, and as article 17 of both Norfolk Vanguard and Norfolk Boreas.

Part 5 - Powers of Acquisition

Article 20 - Compulsory acquisition of land

1.4.1.61 This article authorises the acquisition of land by compulsory purchase. It grants the power to acquire the land that is required for the authorised development. This is subject to:

- article 21 (time limit for exercise of authority to acquire land compulsorily);
- article 22 (compulsory acquisition of rights);
- article 26 (acquisition of subsoil only);
- article 29 (temporary use of land for carrying out the authorised project); and
- article 39 (crown rights);

which are explained below.

1.4.1.62 Article 20 is based on article 18 of the Model Provisions. This power applies to all of the plots identified in the Book of Reference as being subject to the acquisition of freehold rights. Power to acquire other land including the permanent landscaping and ecological mitigation land is required as these elements must be able to be delivered for the authorised project to be acceptable in environmental and ecological terms.

Article 21 - Time limit for exercise of authority to acquire land compulsorily

1.4.1.63 This article gives the undertaker seven years to issue notices to treat or to execute a general vesting declaration to acquire the land that may be compulsorily acquired under the Order. These are the procedural methods by which the process of compulsorily acquiring land may be undertaken should the Order be made.

1.4.1.64 The article also sets a seven year time limit on the power to take temporary possession of land under article 29, although it does not prevent the undertaker from remaining in possession of land after that time.

1.4.1.65 This article was included in the Model Provisions as article 20. The seven year time limit has been included in a number of offshore wind DCOs. It was included in article 24 of Teesside A and B, and in article 19 of each of Hornsea Three, Norfolk Boreas, Norfolk Vanguard East Anglia One North and East Anglia Two and article 2 of Hornsea Four and is considered appropriate for the Mona Offshore Wind Project. A seven year time limit is considered appropriate for Mona given the scale of the project and the potential need to secure a contract for difference award prior to the commencement of construction. Moreover, in the context of very high demand for suppliers of necessary equipment and services the additional time would provide greater flexibility in securing key contracts with suppliers. A seven year period would allow for a greater ability to capitalise on opportunities for collaboration with the Morgan Offshore Wind Project which is being developed by the same partners, bp and EnBW, in the vicinity of the Mona Offshore Wind Project but on a later timescale.

Article 22 - Compulsory acquisition of rights

1.4.1.66 This article allows for rights over land to be acquired as well as the land itself, and also for new rights to be created over land. This includes the power to impose restrictive covenants.

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- 1.4.1.67 Paragraph (2) provides that for the land described in Schedule 8, the undertaker's powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as set out in that Schedule.
- 1.4.1.68 The power to impose restrictive covenants will allow for the possibility of reducing the land subject to outright acquisition and thus enable a more proportionate exercise of compulsory powers. It is therefore in the public interest.
- 1.4.1.69 Paragraph (3) provides that where the undertaker only needs to acquire rights over land it is not obliged to acquire any greater interest in that land.
- 1.4.1.70 Paragraph (4) applies Schedule 9, which imposes modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation code applies to the additional categories of acquisition covered by the Order and the creation of new rights and the imposition of restrictive covenants in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired).
- 1.4.1.71 Article 22 is based on article 21 of the Model Provisions. It differs from the Model Provisions in the following respects (but which reflects the approach in recent DCOs including article 20 of each of Hornsea Three, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two and article 21 of Hornsea Four):
- Paragraph (1) allows the undertaker to acquire existing rights and create new rights over any of the Order land. Although the Applicant has sought to identify all of the plots which are to be subject to the acquisition or creation of rights and has set these out in Schedule 8, this provision ensures that the undertaker retains the flexibility to acquire or create rights over land where that land might otherwise have to be acquired outright.
 - Paragraph (2) is included to clarify that the land identified in Schedule 8 may only be subject to the acquisition or creation of rights or imposition of restrictive covenants, and may not be subject to outright acquisition.
 - Paragraph (4) refers to Schedule 2A of the Compulsory Purchase Act 1965, as modified by Schedule 9, rather than section 8 of the Compulsory Purchase Act 1965. The effect is to limit the possible exceptions to this article to cases where part only of a house, building, factory, park or garden belonging to a house is being acquired.
 - Paragraph (4) confirms that Schedule 9 has effect for the purpose of modifying compensation provisions to ensure that they apply to the compulsory acquisition or creation of rights, or imposition of restrictive covenants, under this article.
 - Paragraphs (5) and (6) set out a mechanism for the transfer of rights to statutory undertakers with the consent of the secretary of state in circumstances where order land is required for the diversion or relocation of their apparatus.

Article 23 – Compulsory acquisition of land: minerals

- 1.4.1.72 This article incorporates Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981, exempting existing rights in minerals from the scope of compulsory acquisition unless they are expressly named and conveyed. It also makes provision for a situation where the owner of mines or minerals wishes to work such mines or minerals.

Article 24 - Private rights

- 1.4.1.73 This article provides for the extinguishment of private rights over land that is subject to compulsory acquisition pursuant to the Order. In so far as the undertaker acquires land or creates new rights over land under the Order, where the continuance of private rights over that land would be inconsistent with the exercise of the right being acquired or created then the private rights in question will be extinguished.
- 1.4.1.74 Paragraph (3) provides that rights over the Order land that is already owned by the undertaker are extinguished on commencement of any activity authorised by the Order which interferes with or breaches those rights.
- 1.4.1.75 Paragraph (4) provides that all private rights over land which the undertaker takes temporary possession of under the Order will be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.
- 1.4.1.76 Paragraphs (5) to (8) make provision for compensation and for circumstances where rights are preserved.
- 1.4.1.77 Article 24 is based on article 22 of the Model Provisions. Whilst it differs from the model provisions in certain respects as set out below, the changes mirror the approach taken in other DCOs including article 21 in each of Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two and article 22 of Hornsea Four. It differs from the Model Provisions in the following respects:
- It applies to all private rights, not just private rights of way. This is to reflect the broad nature of private rights that may exist over the Order land including easements.
 - Paragraph (2) is included to confirm that where land is subject to the acquisition or creation of rights or the imposition of restrictive covenants, any other rights in that land are extinguished if their continuance would be incompatible with the right or covenant being acquired or created by the undertaker.
 - Paragraph (3) (paragraph (2) of the Model Provision) is amended to refer to the Order land, rather than “the limits of land which may be acquired shown on the land plan”, and to clarify the circumstances in which other rights in land owned by the undertaker will be extinguished.
 - Paragraph (4) is included to clarify the compensation position where the undertaker takes temporary possession of land.

Article 25 – Application of the 1981 Act

- 1.4.1.78 This article applies the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 (the “1981 Act”) (with minor modifications to ensure consistency between the terms of the Order and the 1981 Act) to compulsory acquisition under the Order so that the undertaker has the option to acquire land via the vesting declarations procedure.
- 1.4.1.79 Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase (the other being by means of a notice to treat). They allow several parcels to be acquired at once and therefore more efficiently than under the notice to treat procedure.
- 1.4.1.80 The modifications to the 1981 Act contained in this article can be summarised as follows:
- Paragraph (3) modifies section 1(2) so that section 1 applies to the undertaker.

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- Paragraph (4) modifies section 5 to remove the reference to situations where the compulsory purchase order is subject to special parliamentary procedure.
- Paragraph (5) omits section 5A, on the basis that the Order prescribes the time limit for compulsory acquisition in article 21.
- Paragraph (6) modifies the statutory reference in section 5B(1), on the basis that the 2008 Act contains equivalent provisions that apply in respect of development consent orders. The cross-reference to section 5A is also modified, to reflect that the time limit is set out in article 21.
- Paragraph (7) modifies the statutory references in section 6(1)(b), on the basis that the 2008 Act contains equivalent provisions that apply in respect of development consent orders.
- Paragraph (9) modifies paragraph 1(2) of Schedule A1 to change the reference to compulsory purchase orders excluding land that is 9 metres or more below the surface from the counter-notice procedure.
- Paragraph (10) clarifies that references to the Compulsory Purchase Act 1965 in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 of the 2008 Act and as modified by article 29, on the basis that both section 125 and article 29 modify the provisions of the 1965 Act.

1.4.1.81 Article 25 is based on article 23 of the Model Provisions. Due to extensive changes to the relevant provisions of the 1981 Act since the Model Provisions came into force, the wording of this article departs significantly from the Model Provisions. The drafting of this article follows article 22 in each of Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two and article 23 of Hornsea Four.

Article 26 - Acquisition of subsoil only

1.4.1.82 This article allows the undertaker to acquire, or acquire or create rights in, the subsoil below land, rather than having to acquire the land itself.

1.4.1.83 The purpose of article 26 is to give the undertaker the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on landowners which is in the public interest.

1.4.1.84 This article is based on article 24 of the Model Provisions.

Article 27 – Modification of Part 1 of the 1965 Act

1.4.1.85 The purpose of this article is to ensure consistency between the terms of the Order and the Compulsory Purchase Act 1965, as applied by section 125 of the 2008 Act.

Article 28 - Rights under or over streets

1.4.1.86 The purpose of this article is to allow the undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power, without acquisition, is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.

1.4.1.87 The authorised development crosses streets and creates new accesses onto existing streets in several places. This article allows those works to be undertaken without

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interfering with the ownership of land under and above streets which is often separately held from the highway authority interest in the street itself.

1.4.1.88 This article was included in the Model Provisions as article 27 and is generally included in development consent orders including in article 25 of each of Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two and article 27 of Hornsea Four.

Article 29 - Temporary use of land for carrying out the authorised development

1.4.1.89 The purpose of this article is to allow the land set out in Schedules 7 and 8 to be occupied temporarily while the works are carried out. This is land which is required during construction of the authorised development but which is not required permanently. Article 29 also allows for the temporary occupation of any of the land intended for permanent acquisition that has not yet been acquired.

1.4.1.90 The article is based on article 28 of the Model Provisions, with a number of modifications listed below, which are included to minimise the amount of land that is required to be subject to permanent acquisition. These modifications are preceded in numerous development consent orders including, in respect of the (a) and (b) below, in Article 26 of each of Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two and article 28 of Hornsea Four. The modifications are:

- First, the ability to occupy land temporarily that is subject to powers of permanent acquisition but that has not yet been acquired (paragraph (1)(a)(ii)) has been added. This allows the undertaker to occupy land without having to acquire it immediately.
- Secondly, paragraph (1)(e) has been added so that permanent works specified in column (3) of Schedule 7, and any other permanent mitigation works in connection with the authorised development, may be left on land that has been temporarily occupied, rather than having to acquire such land for this purpose. The intended scope of 'mitigation works' is any permanent works necessary and appropriate to mitigate the impacts of the authorised development (e.g. landscaping or ecological mitigation works).
- The notice period has been set at 28 days to align with the drafting included in recent DCOs including Hornsea Four.

1.4.1.91 The inclusion of this article is important to ensure that the authorised development can be carried out efficiently and expeditiously following the making of the Order. The undertaker is entitled to either occupy and use land pending its permanent acquisition, or to temporarily occupy and use land that is not to be permanently acquired, with provision made for the restoration of the land and the payment of compensation to the affected landowners and occupiers for any loss or damage arising. These powers are considered to be reasonable given the status of the authorised development as a nationally significant infrastructure project.

1.4.1.92 The undertaker is not, however, permitted to compulsorily acquire land or rights in land which is in Schedule 7 (Land of which only temporary possession may be taken) of the Order.

1.4.1.93 If the powers conferred by this article were not included then the undertaker would be forced to seek permanent rights over, or the permanent acquisition of, all of the land required for the authorised project, which would be disproportionate for those plots which have been identified as being suitable for temporary occupation and use.

Article 30 - Temporary use of land for maintaining the authorised project

- 1.4.1.94 This article provides that the undertaker may take temporary possession of land within the Order limits, as required for the purpose of maintaining the authorised development, at any time within the “maintenance period” which is defined in paragraph (11). This power could be used for example to create a safe working area around the electrical cables should maintenance works be required and for the replacement of trees, hedges and shrubs as required by a landscape and ecology management plan approved and implemented in accordance with the requirements.
- 1.4.1.95 Paragraph (1)(c) authorises the construction of such temporary works and buildings on the land as may be reasonably necessary for that purpose. Under paragraph (5) all temporary works must be removed before the undertaker gives up possession under this article and the land must be restored to the reasonable satisfaction of the owners.
- 1.4.1.96 This power does not apply in relation to houses, gardens or any other occupied buildings (paragraph (2)).
- 1.4.1.97 Paragraph (3) requires at least 28 days’ notice of intended entry to be served on the owners and occupiers of the land in question.
- 1.4.1.98 Paragraphs (6) to (8) provide for compensation to be paid to owners and occupiers of land of which temporary possession is taken under this article.
- 1.4.1.99 This article was included in the Model Provisions as article 29 and is also included in article 27 of each of Hornsea Three, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two and Article 29 of Hornsea Four.

Article 31 - Statutory undertakers

- 1.4.1.100 This article allows the undertaker to extinguish rights of statutory undertakers and remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the Land plans - onshore (document reference B5) and described in the Book of Reference (document reference D4). In practice it is impractical to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land is required.
- 1.4.1.101 As the land over which this power may be exercised is shown on the Land plans – onshore, and the beneficiaries of such rights are described in the Book of Reference, the requirements of Regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.
- 1.4.1.102 This article is based on article 31 of the Model Provisions. It differs from the Model Provisions in that the article is expressed to be subject to the protective provisions in Schedule 10 (Protective provisions).

Article 32 - Recovery of costs of new connections

- 1.4.1.103 This article provides that if any statutory undertaker's apparatus is removed and this halts a supply from that apparatus to owners or occupiers of premises such that they have to seek a connection to other apparatus, then their reasonable costs in obtaining a new supply can be claimed from the undertaker.

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- 1.4.1.104 This article was included in the Model Provisions as article 33 and has been included on a number of offshore wind farm development consent orders including article 29 of Hornsea Three, East Anglia One North and East Anglia Two, article 30 of Norfolk Boreas and Norfolk Vanguard and article 31 of Hornsea Four.

Article 33 – Funding

- 1.4.1.105 Article 33 provides that the undertaker may not exercise a number of powers prior to it putting into place a guarantee or security equal to its potential liability to compensation payable under the Order which is approved by the Secretary of State.
- 1.4.1.106 This article is preceded in a number of DCOs including Awel y Môr, Hornsea Four, Cleve Hill Solar Park Order 2020, the Immingham Open Cycle Turbine Order 2020 and the Drax Power (Generating Stations) Order 2019.
- 1.4.1.107 Article 33(5) allows the Applicant to demonstrate to the Secretary of State that neither a parent company guarantee or an alternative form of security is required because the undertaker is sufficiently funded to meet any liability to pay compensation under the Order. The inclusion of this paragraph reflects the fact that in many other DCOs, where an undertaker is considered to be sufficiently funded to meet its liabilities, there is no equivalent provision requiring a parent company guarantee or another alternative form of security to be provided by the relevant undertaker. A clear example of this are DCOs where National Highways are the undertaker. This approach has also been taken in the Sheringham and Dudgeon Extension Projects DCO application¹².

Part 6 - Miscellaneous and General

Article 34 – Application of landlord and tenant law

- 1.4.1.108 This article provides that any agreement for the transfer of the benefit of the Order overrides 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 it.
- 1.4.1.109 This article follows article 35 of the Model Provisions.

Article 35 - Felling or lopping of trees and removal of hedgerows

- 1.4.1.110 This article allows (subject to the restrictions in paragraph (2)) any tree or shrub that is within or overhanging the Order limits or near any part of the authorised project to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the scheme or endanger anyone using it. Compensation is payable for any loss or damage caused.
- 1.4.1.111 Further, this article also authorises the removal of any hedgerow as defined in the Hedgerow Regulations 1997 within the Order Limits in addition to those identified in Schedule 11 of the Order. This article is based on article 39 of the Model Provisions and recent DCOs for offshore generating stations including article 34 of Hornsea Three, East Anglia One North and East Anglia Two and article 35 of Norfolk Vanguard and Norfolk Boreas. It is necessary for the undertaker to have the power to remove hedgerows across the Order Limits to ensure that any new hedgerow planting does

¹² Application reference EN010109

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not prevent or impede the construction, operation or maintenance of the authorised project.

Article 36 - Trees subject to tree preservation orders

- 1.4.1.112 Article 36 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. Compensation is provided for if loss or damage is caused.
- 1.4.1.113 The article is a model provision save for that the article applies generally to any tree subject to a tree preservation order made after the date of the application (to be added) and either within or overhanging the Order limits.

Article 37 - Abatement of works abandoned or decayed

- 1.4.1.114 This article is intended to make sure that the undertaker will not abandon or allow to fall into decay the offshore works. It provides a power which enables the Secretary of State, 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 Secretary of State 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.

Article 38 - Saving provisions for Trinity House

- 1.4.1.115 This is a model provision for harbours and is commonly used in DCOs for offshore wind generating stations. It has, for example, most recently been included in Hornsea Four and Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two. It is intended to provide protection to Trinity House.

Article 39 - Crown rights

- 1.4.1.116 Article 39 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 Hornsea Four and Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two.

Article 40 – Protective provisions

- 1.4.1.117 This article gives effect to Schedule 10, which contains provisions protecting the interests of third parties. It was not included in the Model Provisions but is a standard article in development consent orders that include protective provisions.

Article 41 - Operational land for purposes of the 1990 Act

- 1.4.1.118 The effect of this article is that the land within the Order limits is to be treated as the operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990. Although section 264 of the Town and Country Planning Act 1990 is entitled “cases in which land is to be treated as not being operational land”, subsections (3) and (4) set out cases in which land is to be treated as operational land.

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- 1.4.1.119 This article was included in the Model Provisions as article 36. This article is necessary to ensure that development is correctly classified under the Town and Country Planning Act 1990 and benefits from the appropriate permitted development rights.

Article 42 – Certification of plans etc.

- 1.4.1.120 This article provides for various application plans and documents listed in Schedule 15 to be certified by the Secretary of State as true copies of those documents following the making of the Order. This is based on article 41 of the Model Provisions. However, the list has been moved to Schedule 15 as, with the inclusion of all parts of the Environmental Statement, it is of considerable length.

Article 43 - Service of notices

- 1.4.1.121 This article governs the service of notices required to be given under the Order. In particular it allows service by email with the consent of the recipient (paragraph (1)(c)), and deals with the situation of service on an unknown landowner (paragraph (4)).
- 1.4.1.122 This article was not included in the Model Provisions but is a sensible addition that has been included in similar orders for example, article 44 of Hornsea Three, article 43 of Norfolk Vanguard and Norfolk Boreas, article 45 of East Anglia One North and East Anglia Two and article 47 of Hornsea Four.

Article 44 – No double recovery

- 1.4.1.123 This article provides that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition, the article provides that there is not to be double recovery under two or more different provisions of this Order.
- 1.4.1.124 This article was not provided for in the Model Provisions but has been included in granted orders, see for example article 40 of The Port of Tilbury (Expansion) Order 2019¹³. This article simply reflects the established position that a claimant in a compulsory purchase matter shall be compensated for no more than and no less than their loss.

Article 45 - Requirements, appeals, etc.

- 1.4.1.125 This article provides for an appeal process for the refusal or non-determination of any details under a requirement or other approval specified within the Order. The details of the appeal procedure are provided in Schedule 12. It is required to ensure that subsequent applications for approval are determined appropriately. This provision is based on the Hinkley Point C (Nuclear Generating Station) Order 2013 and the West Burton C (Gas Fired Generating Station) Order 2020.

Article 46 - Arbitration

- 1.4.1.126 This article governs any disagreement about any provision of the Order. Unless the Upper Tribunal (Lands Chamber) has jurisdiction the matter is to be settled by arbitration. If the parties cannot agree on who the arbitrator should be then this will be decided by the Secretary of State.

¹³ S.I. 2019/359

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- 1.4.1.127 Section 46(2) provides that no decision of the Secretary of State is subject to arbitration. This article is also subject to article 38 (Saving provisions for Trinity House).
- 1.4.1.128 This article was included in the Model Provisions as article 42. This article departs from the model provisions in that it applies Schedule 13 which sets out more detailed rules and a process for arbitration in order to provide greater certainty to all parties involved in the process who may rely on this provision. A similar approach has been taken in recent DCOs including Hornsea Three, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two.

1.5 Schedules

Schedule 1 – Authorised development

- 1.5.1.1 Part 1 of Schedule 1 describes the authorised development, which is described in detail in the Project Description chapter (document reference F1.3) of the Environmental Statement.
- 1.5.1.2 The Schedule is split into different work numbers. Each of these work numbers represents a different part of the authorised development. This split of the authorised development between different work numbers is designed to enable the Order to refer to different parts of the authorised development by citing the relevant work number.
- 1.5.1.3 The numbered works have been separated out between “Offshore”, “Intertidal and in the County of Conwy”, “In the County of Denbighshire” and “In the Counties of Conwy and Denbighshire”.
- 1.5.1.4 Table 1 provides the maximum co-ordinates within which the offshore works may be situated. This delineates the area of Work No. 1 within which wind turbine generators can be placed and Work no. 2 within which the offshore export cable can be placed.
- 1.5.1.5 The ancillary works are set out in Part 2 of Schedule 1.

Schedule 2 - Requirements

- 1.5.1.6 The requirements in Schedule 2 are the equivalent of planning conditions. They apply to the carrying out and operation of the authorised development and reflect the processes and procedures usually employed by the undertaker when implementing a project such as this. Where appropriate, controls are also included in certain requirements in relation to onshore site preparation works.
- 1.5.1.7 The requirements provide that the various details and plans to be approved must, where appropriate, reflect the mitigation measures included in the Environmental Statement. The requirements also provide that the approved details and plans must be implemented as approved, unless further amendments to them are approved.
- 1.5.1.8 The requirements have been drafted in line with recently approved offshore generating station DCOs including Awel y Môr, Hornsea Four, Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two.
- 1.5.1.9 Requirement 1 (Time limits) specifies the time limit for commencing the authorised development as being seven years from the date on which the Order comes into force. This was included in the Model Provisions as requirement 2. A time limit of seven years follows the approach taken in the Dogger Bank Teesside A and B Offshore Wind Farm Order 2015, Hornsea Three and Hornsea Four and is considered appropriate (see paragraph 1.4.1.63).

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- 1.5.1.10 The seven year time limit would be subject to sub-paragraph (2) which replicates the provisions of Section 91(3B) of the Town and Country Planning Act 1990 whereby if proceedings are begun to challenge the validity of the grant of a planning permission the period before the end of which development is required to be begun is extended by one year. This provision is not preceded in other DCOs but is considered to be appropriate to ensure that there is no risk of the DCO lapsing if challenge proceedings are drawn out.
- 1.5.1.11 In Requirement 2 (Offshore Design Parameters) Table 2 provides maximum parameters for the offshore works.
- 1.5.1.12 Requirements 3 (Aviation safety) impose restrictions on the operation of the authorised development in the interests of aviation safety and requires the undertaker to exhibit lights as required by the Air Navigation Order 2016 and/or determined necessary for aviation safety after consulting with the Defence Infrastructure Organisation Safeguarding and as directed by the Civil Aviation Authority. The undertaker must notify Defence Infrastructure Organisation Safeguarding regarding the construction of the scheme and its parameters. The undertaker is required to operate the lights installed at the lowest permissible lighting intensity level.
- 1.5.1.13 Requirement 4 (Stages of authorised project) requires the undertaker to submit for approval to the relevant planning authority confirmation of whether construction of the development will be in one or more stages before the onshore works may start.
- 1.5.1.14 Requirement 5 (Onshore substation works) provides that the undertaker must obtain approval from the relevant planning authority (following consultation with NRW as appropriate) of detailed parameters for the onshore substation works. Under sub-paragraph (3), the detailed parameters must be in accordance with requirement 6 (Detailed design parameters onshore) and substantially in accordance with the design principles document.
- 1.5.1.15 Requirement 6 (Detailed design parameters onshore) sets out the maximum parameters for the onshore works with specified maximum heights for the buildings and structures required for the onshore substation.
- 1.5.1.16 Requirement 7 (Provision of landscaping) and Requirement 8 (Implementation and maintenance of landscaping) requires a written landscaping scheme and associated work programme to be approved by the relevant planning authority (following consultation with NRW if appropriate) before the relevant stage of the onshore works may commence. The maintenance period for replacing as necessary any trees or shrubs planted in accordance with a landscaping scheme is 5 years.
- 1.5.1.17 Requirement 9 (Code of construction practice) provides that no stage of the onshore works may commence until a code of construction practice (“CoCP”) for the relevant stage of works has been submitted to and approved by the relevant planning authority (following consultation with NRW and the local highways authority as appropriate). The CoCP must cover all the matters in the outline code of construction practice and outline management plans as well as the matters listed within the requirement and it must be implemented as approved.
- 1.5.1.18 Requirement 10 (Highway accesses) prevents formation of new permanent means of access to a highway to be used by vehicular traffic, or any permanent alteration to an existing means of access to a highway used by vehicular traffic until written details have been submitted to and approved by the relevant planning authority in consultation with the highway authority. The highway accesses must only be constructed in accordance with the approved details.

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- 1.5.1.19 Requirement 11 (Onshore archaeology) requires the undertaker to submit to the relevant planning authority an onshore written scheme of investigation (“WSI”) for that stage of the onshore works for approval. The WSI must be in accordance with the outline onshore and intertidal written scheme of investigation as appropriate for the relevant stage. The drafting requires a WSI to be submitted and approved prior to commencement of each stage.
- 1.5.1.20 Requirement 12 (Landscape and ecology management plan) requires a landscape and ecology management plan to be approved by the relevant planning authority (following consultation with NRW) before the relevant stage of the onshore works may commence. The landscape and ecology management plan must be in accordance with the outline landscape and ecology management plan as well as include the matters listed within the requirement. The landscape and ecology management plan must be implemented as approved.
- 1.5.1.21 Requirement 13 (European protected species onshore) prohibits the commencement of any stage of the onshore works (other than surveying and investigation necessary to comply with this requirement) until pre-construction surveys to identify whether any European protected species or nationally protected species under the Wildlife and Countryside Act 1981 (“Protected Species”) is present or could be affected by the relevant works which have been carried out for that stage. If a Protected Species is present then a scheme of protection and mitigation is required to be approved by the relevant planning authority (in consultation with NRW) before a stage of the onshore works which is likely to affect the species is commenced. Each stage must be implemented in accordance with the approved scheme.
- 1.5.1.22 Requirement 14 (Construction hours) sets out standard construction hours for onshore construction works and construction-related traffic movements of 07.00 to 19.00 Monday – Saturday, with no activity on Sundays or bank holidays except where otherwise specified in the Requirement or agreed within the CoCP. Sub-paragraph (2) specifies the type of work that can be carried out outside of the standard construction hours. Sub-paragraphs (3) to (5) deal with the specific notification requirements in relation to works.
- 1.5.1.23 Requirement 15 (Restoration of land used temporarily for construction) requires land used for temporary construction of the onshore works to be reinstated within 12 months of completion of the relevant stage of the onshore works in accordance with the details approved by the relevant planning authority.
- 1.5.1.24 Requirement 16 (Control of operational artificial light emissions) requires the undertaker to submit for approval to the local planning authority a written scheme for the management and mitigation of artificial light emissions from the onshore substation before it can be brought into operation. The approved mitigation scheme must be implemented and maintained during the lifetime of the onshore substation.
- 1.5.1.25 Requirement 17 (Control of noise during operational phase) places restrictions on the noise rating level for the operation of onshore substation as identified in the Requirement. The noise levels are to be measured in accordance with the relevant British Standard provided and other conditions set out in the requirement.
- 1.5.1.26 Requirement 18 (Operational drainage strategy) provides that works relating to onshore substation must not commence until a written operational drainage management strategy is approved by the relevant planning authority (following consultation with NRW). Each operational drainage management strategy must substantially accord with the principles set out in the outline operational drainage management strategy and must be implemented as approved.

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- 1.5.1.27 Requirement 19 (Employment and skills plan) provides that no stage of the onshore works can commence until an employment and skills plan has been notified to the relevant local planning authorities (following consultation with Denbighshire County Council, Conwy County Borough Council, Isle of Man Government, and the Isle of Anglesey County Council). The employment and skills plan must be substantially in accordance with the outline employment and skills plan.
- 1.5.1.28 Requirement 20 (Offshore decommissioning) provides for a written offshore decommissioning programme to be submitted to the Secretary of State prior to the commencement of the offshore works and replicates the wording used in numerous offshore generating station DCOs to date including Hornsea Four, the East Anglia One North and East Anglia Two. This requirement operates in addition to the statutory requirements under the Energy Act 2004.
- 1.5.1.29 Requirement 21 (Onshore decommissioning) requires the undertaker to submit for approval to the relevant planning authority a written scheme of decommissioning for the onshore works at least 6 months prior to any decommissioning works taking place. The scheme of decommissioning must include a code of construction practice and must be implemented as approved.
- 1.5.1.30 Requirement 22 (Requirement for written approval) provides that all agreements and approvals required pursuant to the requirements in this Schedule whether given by the Secretary of State, the relevant planning authority or another person must be given in writing. This requirement replicates the wording used in the Awel y Môr Offshore Wind Farm Order 2023.
- 1.5.1.31 Requirement 23 (Amendments to approved details) confirms that details approved pursuant to the requirements include any amendments that may subsequently be agreed or approved. This was included in the Model Provisions as requirement 37 and replicates the wording used in the Awel y Môr Offshore Wind Farm Order 2023 and Hornsea Four.
- 1.5.1.32 Discussions are ongoing with the relevant aviation stakeholders and it is anticipated that a further requirement will be agreed securing the necessary mitigation measures. The DCO will be updated with this during examination when the requirement wording is agreed.

Schedule 3 – Streets subject to street works

- 1.5.1.33 This Schedule lists the streets subject to street works. Street works are mainly required to form new accesses, create visibility splays to allow for safe use of accesses and to improve existing visibility splays. Much of the work required will be undertaken in highway verges but occupation of some areas of carriageways may be required to create new accesses or provide safe working areas. This Schedule relates to article 10 (Street works).

Schedule 4 – Streets to be temporarily stopped up or restricted

- 1.5.1.34 This Schedule lists the streets and rights of way which will be temporarily stopped up during construction. This Schedule relates to article 12 (Temporary restriction of use of streets).

Schedule 5 – Public rights of way to be temporarily stopped up or restricted

- 1.5.1.35 This Schedule lists the public rights of way which will be temporarily stopped up during the carrying out of the authorised project. This Schedule relates to article 13 (Temporary stopping up of public rights of way).

Schedule 6 – Access to works

- 1.5.1.36 A number of accesses to works will require to be made. This Schedule lists the locations of those accesses and where accesses will be taken from. It identifies the public highways from which access can be taken and the plans show the area of those highways where access will be taken. This Schedule relates to article 14 (Access to works).

Schedule 7 – Land of which only temporary possession may be taken

- 1.5.1.37 This Schedule lists the plots of which the undertaker may only take temporary possession and cannot acquire rights or ownership of the land. The Schedule relates to article 29 (Temporary use of land for carrying out the authorised project).

Schedule 8 - Land in which only new rights etc. may be acquired

- 1.5.1.38 This Schedule lists the plots within which the undertaker may only acquire rights and cannot acquire ownership. The rights which the undertaker may acquire are set out in Column (2). The Schedule relates to article 22 (Compulsory acquisition of rights).

Schedule 9 – Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants

- 1.5.1.39 Modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965 to provide for the acquisition of rights and imposition of restrictive covenants as well as acquisition of ownership of the land. The Schedule relates to article 22 (Compulsory acquisition of rights).

Schedule 10 – Protective Provisions

- 1.5.1.40 This Schedule relates to article 40 (Protective provisions) and sets out a number of protections for various bodies to ensure that the powers sought in the Order are exercised appropriately.
- 1.5.1.41 Protections for utilities are routinely included in orders and are set out in Part 1.
- 1.5.1.42 Protections for electronic communication code providers are routinely included in orders and are set out at Part 2.
- 1.5.1.43 Part 3 provides for the protection of Dwr Cymru Cyfyngedig.
- 1.5.1.44 Part 4 provides for the protection SP Manweb.
- 1.5.1.45 Part 5 provides for the protection of Wales and West.
- 1.5.1.46 Part 6 provides for the protection of the Welsh Government.
- 1.5.1.47 Part 7 provides for the protection of National Grid Electricity Transmission Plc.

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1.5.1.48 Part 8 sets out protection for Network Rail.

Schedule 11 – Removal of hedgerows

1.5.1.49 This schedule sets out the lengths of hedgerows which may be interfered with or removed under the Order. It is divided into ‘important’ hedgerows and other hedgerows. The Schedule relates to article 35 (Felling or lopping of trees or removal of hedgerows).

Schedule 12 – Approval of matters specified in requirements

1.5.1.50 This Schedule sets out a procedure for the approval of matters under the Requirements and any appeals related thereto. This procedure follows that set out in recent energy DCOs including the Thurrock Flexible Generation Plant Development Consent Order 2022, the Awel y Môr and Hornsea Four.

Schedule 13 – Arbitration Rules

1.5.1.51 This Schedule relates to article 46 (Arbitration) and provides an arbitration process. 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. This was preceded in the Awel y Môr Offshore Wind Farm Order 2023 and Hornsea Four.

1.5.1.52 The timetable for the arbitration process is provided in paragraph 4. The costs of the arbitration will be awarded by the arbitrator and the principle that each party will bear its own costs unless either party behaved unreasonably. Costs will include the arbitrator’s costs together with the reasonable legal fees and other costs incurred by the other party.

Schedule 14 – Marine Licence: Mona Offshore Wind Farm Generation Assets

1.5.1.53 Schedule 14 includes the deemed marine licence for the Mona generation assets. The licence is deliberately drafted such that it can be read independently of the rest of the Order and follows the approach taken on numerous offshore generating station DCOs including most recently Hornsea 3, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two.

Part 1 – Licensed Marine Activities

1.5.1.54 Paragraph 1 (interpretation) provides interpretation of certain words and phrases used in the licence. Many of which are identical to the main Order or have been amended to make sense in the offshore only context.

1.5.1.55 Paragraphs 2 to 4 (Details of licensed activities) sets out a description of the licensed activities by reference to the relevant Work Nos. in Schedule 1 of the main Order.

1.5.1.56 Paragraph 5 sets out the grid coordinates for those works within the deemed marine licence.

1.5.1.57 Paragraph 6 confirms the deemed marine licence will remain in force until the authorised scheme has been decommissioned.

1.5.1.58 Paragraph 7 confirms that section 72(7) and (8) (Variation, suspension, revocation and transfer) of the 2009 Act does not apply to a transfer of the deemed marine licences

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falling within article 7 (Benefit of the Order). Section 72(7) permits the licensing authority to transfer a marine licence to another person. Section 72(8) provides that "a licence may not be transferred except in accordance with subsection 7". Article 7 (Benefit of the Order) however provides for a transfer to take place in a different way to section 72(7). Since article 7 is different from the precise wording of section 72(7) of the 2009 Act it is necessary to specify that section 72(7) only applies to a transfer not falling within article 7 in order to enable article 7 to operate. Without specifying this, article 7 might be claimed to be inoperative because of adopting a different wording from section 72(7).

- 1.5.1.59 Paragraph 8 confirms that where any condition requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under the licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved by NRW. Paragraph 9 further confirms that any amendments to approved details must be in accordance with the principles and assessments set out in the Environmental Statement and that approval by NRW of any amendment or variation may only be given where it has been demonstrated to the satisfaction of NRW that it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Part 2 – Conditions

- 1.5.1.60 Condition 10 (Design parameters) specifies the design parameters associated with the works comprised within the authorised project relevant to the deemed marine licence. This largely replicates the design parameters in the requirements but also include some restrictions which are not included in Schedule 2 of the Order, this is because the deemed marine licence covers only part of the offshore infrastructure.
- 1.5.1.61 Condition 11 (Maintenance of the authorised project) provides that the undertaker may maintain the authorised project except where the deemed marine licence provides otherwise and sets out what maintenance works are. No maintenance works can take place until an operations and maintenance plan has been approved by NRW.
- 1.5.1.62 Condition 12 (Extension of time periods) confirms that any time periods given in the licence may be extended with the agreement of the other party.
- 1.5.1.63 Condition 13 (Notifications and inspections) provides for a system of supplying copies of the licence and other notices to agents and contractors, restricting the use of contractors and vessels to those notified to NRW and where appropriate the Maritime and Coastguard Agency ("MCA"), Trinity House, United Kingdom Hydrographic Office and/or the Kingfisher Information Service of Seafish, mariners and regional fisheries contacts and publicising commencement and progress of the licensed activities.
- 1.5.1.64 Condition 14 (Colouring of structures) specifies the colours which structures must be painted.
- 1.5.1.65 Condition 15 (Aids to navigation) provide for various matters to aid navigation in the vicinity of the authorised project, including the provision of various navigation aids; the ongoing availability of the aids to navigation; and notification of the progress of works to Trinity House and NRW.
- 1.5.1.66 Condition 16 (Chemicals, drilling and debris) restricts the use of chemicals and other substances and provides for the disposal of certain drilling arisings and the monitoring of construction materials so as to identify those which may accidentally fall into the sea, which shall then be investigated and, where identified, recovered. This provision also deals with how the undertaker is to deal with any oil, fuel or chemical spills.

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- 1.5.1.67 Condition 17 (Force majeure) provides for the notification of deposits made in an emergency within or outside of the Order limits.
- 1.5.1.68 Condition 18 (Pre-construction plans and documentation) provides for the submission for approval, before the commencement of licensed activities, of a design plan showing the proposed location, dimensions and choice of foundation of all elements of the authorised project to ensure that the licensed activities conform with the description of the works and the design parameters specified within the conditions. It also provides for submission for approval of the following:
- a construction programme;
 - a monitoring plan;
 - an offshore construction method statement;
 - an offshore environmental management plan;
 - an offshore written scheme of investigation for archaeology and protocol for archaeological discoveries;
 - an offshore operations and maintenance plan;
 - an aids to navigation management plan;
 - a marine mammal mitigation protocol where driven or part-driven pile foundations are used;
 - a dropped objects plan;
 - a vessel traffic management plan; and
 - a vessel traffic monitoring strategy.
- 1.5.1.69 Many of the outline or in principle versions of these schemes and plans are being submitted with the Application and the versions of these documents that are submitted for approval will need to be in accordance with the outline or in principle plan or scheme.
- 1.5.1.70 Condition 20 (Underwater sound management strategy) requires submission and approval of an underwater sound management strategy which must be in accordance with the outline underwater sound management strategy before commencement of any piling activities or unexploded ordnance (“UXO”) clearance.
- 1.5.1.71 Condition 21 (UXO clearance) requires the submission and approval of a method statement for unexploded ordnance and a marine mammal mitigation protocol for the clearance of UXO before any clearance activities are undertaken. It further requires details of clearance activities to be provided to NRW prior to and after UXO clearance takes place.
- 1.5.1.72 Condition 22 (Offshore safety management) states that no part of the authorised project may commence until NRW has confirmed that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate contained within MGN654 and its annexes.
- 1.5.1.73 Condition 23 (Reporting of engaged agents, contractors and vessels) requires the undertaker to provide to NRW details of agents and contractors engaged to carry out the licensed activities, and a weekly update as to which vessels are being used during construction.
- 1.5.1.74 Condition 24 (Pre-construction monitoring and surveys) specifies the manner in which the undertaker shall discharge its obligation under Condition 18 to put forward

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proposals for pre-construction surveys/monitoring and provides an indicative list of the expected pre-construction surveys.

- 1.5.1.75 Condition 25 (Construction monitoring) specifies the manner in which the undertaker shall discharge its obligation under Condition 18 to put forward proposals for construction surveys/monitoring, and specifically requires certain underwater sound monitoring. It provides for NRW to require further underwater sound monitoring depending on the results.
- 1.5.1.76 Condition 26 (Post-construction monitoring) specifies the manner in which the undertaker shall discharge its obligation under Condition 18 to put forward and carry out its proposals for post-construction surveys/monitoring and provides an indicative list of the expected post-construction surveys. It also requires the undertaker to carry out additional monitoring in the event any report submitted to NRW under this Condition identifies a need for additional monitoring.
- 1.5.1.77 Condition 27 (Reporting of scour and cable protection) provides for the undertaker to give details of the location and volume of scour and cable protection.
- 1.5.1.78 Condition 28 (Completion of construction) requires the submission of a close out report (confirming the date of completion of construction and final as built details of the installed wind turbine generators and cables as appropriate) to NRW, MCA, Trinity House, UKHO and relevant statutory nature conservation bodies within 3 months of completion of construction. The condition prohibits construction activities following completion of construction.
- 1.5.1.79 Condition 29 (Marine noise registry) requires the undertaker to submit information compliant with the Marine noise registry requirements to NRW in relation to driven or part-driven pile foundation works and UXO clearance works.
- 1.5.1.80 Condition 30 (Requirement for written approval) requires any agreement or approvals given by NRW in relation to the conditions to be given in writing.

Schedule 15 – Documents to be certified

- 1.5.1.81 This schedule lists the documents and plans to be certified under article 42 (Certification of plans and documents, etc.) by the Secretary of State as true copies of those documents following the making of the Order.