



AQUIND Limited

AQUIND INTERCONNECTOR

Explanatory Memorandum – Clean

The Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
Regulation 5(2)(c)

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**Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009 (SI 2009/2264) (Regulation 5(2)(c))**

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1. INTRODUCTION

- 1.1 AQUIND Limited ("**the Undertaker**") has made an application (the "**Application**") to the Secretary of State for a development consent to authorise the construction, operation and maintenance of AQUIND Interconnector (described at Schedule 1 (the "**Authorised Development**") to the draft development consent order ("**DCO**") which accompanies the Application entitled the AQUIND Interconnector Order 202[●] (the "**Order**").
- 1.2 The purpose of an explanatory memorandum is to assist the Examining Authority, Interested Parties and the Secretary of State in understanding the rights and powers sought within the Order. This Explanatory Memorandum therefore explains the purpose and effect of each article of, and schedule to, the Order, as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations (S.I. 2009/2264) (as amended). In particular, it sets out (as per the Planning Inspectorate's Advice Note 15: Drafting Development Consent Orders):
 - 1.2.1 the source of the provision (whether it is bespoke or based on a granted DCO);
 - 1.2.2 the section/Schedule of the Planning Act 2008 (the "**Act**") under which it is made; and
 - 1.2.3 the reasons why the article is relevant to the Proposed Development and considered important/essential to the delivery of the Authorised Development.
- 1.3 This explanatory memorandum should be read alongside the draft Order (Document Reference: 3.1) and the documentation submitted as part of the Application.
- 1.4 In preparing the draft Order, we have had regard to a number of granted DCOs and DCOs currently undergoing examination. The purpose of doing so was to understand the nature and scope of the powers and rights included in granted DCOs and DCOs currently being examined relating to infrastructure of a similar nature to the Authorised Development, both in respect of the type of infrastructure and the nature of the physical works required to construct it.
- 1.5 Where there are similarities between the Order and granted DCOs (such as the need carry out work in streets or to acquire land and rights), we have included rights and powers of a corresponding nature within the draft Order, or explained where we have departed.
- 1.6 Where we have included drafting from a made DCO, we have explained which made DCO the drafting has been based on and justified why the inclusion of the power or right is appropriate and important/essential for the delivery of the Authorised Development. In addition, we have followed the guidance provided by the Planning Inspectorate Advice Note 15: Drafting Development Consent Orders and Advice Note 13: Preparation of a Draft Order Granting Development Consent and Explanatory Memorandum, and the guidance on drafting statutory instruments produced by the Office of Parliamentary Counsel.

2. THE UNDERTAKER

- 2.1 AQUIND Limited, the Undertaker, is a company registered in England and created in accordance with the laws of England and Wales, with company number 06681477 and registered at OGN House, Hadrian Way, Wallsend, NE28 6HL.

- 2.2 The Undertaker was incorporated with the sole purpose of promoting and developing AQUIND Interconnector, the Project.
- 2.3 An Electricity Interconnector Licence was granted to the Undertaker pursuant to section 6(1)(e) of the Electricity Act 1989 on 9th September 2016, authorising it to participate in the operation of an electricity Interconnector.
- 2.4 The sole shareholder (100%) of AQUIND Limited is AQUIND Energy Sarl, a company registered in Luxembourg with company number B 229924 and registered at 26, boulevard de Kockelscheuer, L-1821 Luxembourg.

3. THE PURPOSE OF THE ORDER

- 3.1 Section 35(1) of the Act provides that the Secretary of State may give a direction for development to be treated as development for which development consent is required. On 30 July 2018 the Secretary of State directed pursuant to section 35(1) and 35ZA of the Act that the proposed UK elements of AQUIND Interconnector, together with any development associated with it, is to be treated as development for which development consent is required.
- 3.2 When making the direction the Secretary of State confirmed that in his view AQUIND Interconnector is nationally significant because:
 - 3.2.1 the two gigawatt capacity of the proposed Development is similar in terms of electrical capacity to a generating station that would qualify to be considered under the Planning Act 2008 process as nationally significant.
 - 3.2.2 by progressing the proposed Development through the Planning Act 2008 development consent process, it would provide the certainty of a single, unified consenting process and fixed timescales.
 - 3.2.3 it will reduce the need to apply for separate consents from the Marine Management Organisation and local planning authorities.
- 3.3 Accordingly, the Undertaker is making the Application for the Order. The Order is part of the Application, and will authorise the construction, maintenance and operation of the Authorised Development.
- 3.4 The Order refers to the person authorised to exercise the powers in the Order as 'the undertaker', and defines the undertaker as AQUIND Limited or the person who has the benefit of the Order in accordance with article 6 (Benefit of Order) and 7 (Consent to transfer benefit of Order).
- 3.5 Section 115(1) of the Act provides that development consent may be granted for "(a) development for which development consent is required, or (b) associated development". "associated development" is defined by section 115(2) of the Act as meaning development which:
 - 3.5.1 is associated with the development for which development consent is required (or any part of it);
 - 3.5.2 does not consist of or include the construction or extension of one or more dwellings; and
 - 3.5.3 for the purposes of the Authorised Development is to be carried out wholly in one or more of the following areas:
 - (A) England; and
 - (B) waters adjacent to England up to the seaward limits of the territorial sea.

- 3.6 Section 120(3) of the Act provides that an order can make a provision "relating to, or to matters ancillary to, the development" and makes it clear (section 120(4)) that such matters 'include', in particular, provision for or relating to any of the matters listed in Part 1 of Schedule 5 of the Act.
- 3.7 Section 120(5) provides that a DCO may:
- 3.7.1 apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;
 - 3.7.2 make such amendments, repeals or revocations of statutory provisions of local application as appear to the Secretary of State to be necessary or expedient in consequence of a provision of the order or in connection with the order;
 - 3.7.3 include any provision that appears to the Secretary of State to be necessary or expedient to giving full effect to any other provision of the order; and
 - 3.7.4 include any incidental, consequential, supplementary, transitional or transitory provisions and savings.
- 3.8 Section 122(1) of the Act provides that an order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied the requirements in sub-section (2) and (3) are met.
- 3.9 In addition to providing for the construction, maintenance and operation of the Authorised Development, the Order will, in accordance with section 120 (3) and section 122 and Schedule 5 to the Act, authorise the acquisition of land and rights over land and the imposition of restrictions over land to ensure there is no impediment to the delivery and safe operation of the Authorised Development. The Book of Reference (Document Reference 4.3, Rev 005) includes a description of the land and interests which are either to be authorised to be acquired by compulsion or over which rights may be acquired and restrictions imposed pursuant to the Order, and that land and the extent to which it may be affected is shown on the Land Plans (Application Document Reference: 2.2, Rev 004). The Order, the Book of Reference, the Land Plans and the Statement of Reasons (Application Document Reference 4.1, Rev 003), which sets out the justification for the acquisition or interference with the identified land, should be read together.
- 3.10 The Authorised Development, for which development consent is sought, is detailed below at paragraphs 3.12 – 3.13. As explained above at paragraph 3.1, the direction issued dated 30 July 2018 by the Secretary of State pursuant to section 35 of the Act directed that the proposed development together with any development associated with it, is to be treated as development for which development consent is required. In accordance with the direction that any development associated with the proposed development, as that term was defined in the request for the direction pursuant to section 35 of the Act to the Secretary of State, is to be treated as development for which development consent is required, development which constitutes associated development has not been identified separately as part of the Authorised Development within the Order.
- 3.11 It should be noted in this regard that development consent is sought by the Order for the use of spare glass fibres within the fibre optic cables laid as part of the HVDC cable circuits for commercial telecommunications purposes, with the intention for this use to be authorised made clear in the request for the direction made to the Secretary of State. Irrespective of the direction which confirms development consent is required for this associated use (development), the

commercial telecommunications use of spare glass fibres within the fibre optic cables and the infrastructure associated with the fibre optic cables, in so far as it relates to that proposed commercial use, satisfies the requirements of section 115(2) of the Act.

Development authorised by the Order

3.12 The UK elements of AQUIND Interconnector, to be authorised by the Order (also known as the Authorised Development), comprises the following elements:

3.12.1 **Work No. 1 - Substation Connection Works:** extension of the existing substation, including site establishment, earthworks, civil and building works, up to two onshore HVAC cable circuits (three cables to a circuit together with a fibre optic cable) between the converter station and the existing National Grid Lovedean substation, with termination equipment (gas insulated and/or air insulated switchgears) at the Lovedean substation and up to 5 link boxes per cable circuit.

3.12.2 **Work No. 2 - Converter Station Works:** consists of the infrastructure required to convert the direct current electricity to alternating current to allow for this to be transmitted to the alternating current transmission system via Lovedean substation, and vice versa. The converter station infrastructure consists of:

- (A) site clearance, preparation, establishment and earth works;
- (B) 2 onshore HVDC cables of up to 400 metres in length (each cable circuit)
- (C) 2 converter hall buildings;
- (D) a control building associated with the converter hall buildings (one in total);
- (E) 6 transformers (and one spare transformer);
- (F) HVAC cable termination equipment including two 400 kilovolt air and or gas insulated switchgears and busbars;
- (G) HVDC cable termination equipment including two 400 kilovolt air and or gas insulated switchgears and busbars;
- (H) 2 valve cooling systems;
- (I) a spares building with an internal perimeter fence;
- (J) up to 2 standby back-up diesel generators with a capacity of up to 800 kilowatt;
- (K) up to 2 distribution transformers and 2 auxiliary transformers, required in connection with the supply of power to the converter station, each 1680 kilowatt;
- (L) 6 valve reactors;
- (M) up to 6 AC filter banks;
- (N) up to 8 lightning masts;
- (O) up to 40 lighting columns;
- (P) up to 5 link boxes per cable circuit;
- (Q) HVAC Cables of up to 100 metres in length (each cable circuit)

- (R) converter station building outer security perimeter fence and inner electrified fence separated by a sterile zone including up to 2 security gates;
- (S) up to 2 telecommunications buildings with a security perimeter fence including a security gate and in-between sterile zone and parking for up to 2 vehicles at any one time and associated fibre optic data transmission cables;
- (T) an access road of up to 1.2 kilometres in length and 7.3 metres in width;
- (U) works required to replace an 11 kilovolt overhead electricity line with an underground electricity cable so as to facilitate the safe passage of construction vehicles along the proposed access road;
- (V) up to 2 attenuation points with a capacity of 2,500 cubic metres;
- (W) up to 2 fire protection deluge system;
- (X) permanent car parking for up to 10 vehicles;
- (Y) soft and hard landscaping including bunds and haul roads to facilitate their construction: and
- (Z) access junction and associated gated highway link.

- 3.12.3 The converter station infrastructure is to be consented using a maximum parameter approach, with the buildings subject to maximum dimension constraints, to allow for an assessment of the worst case likely significant environmental effects within a development envelope, taking into account that the final siting of the converter station footprint is to be confirmed following the grant of the Order. In undertaking this approach the Undertaker has fully considered *Advice Note Nine: Rochdale Envelope*. This approach is required to ensure adequate design flexibility for the chosen contractor, to allow them to implement the best technological solution within the fully assessed maximum parameters.
- 3.12.4 Requirements (discussed in more detail at section 12.3 – 12.6 below) are imposed to ensure the converter station siting option is confirmed prior to the commencement of any works within Work No.2 and that the final design of the, buildings, associated equipment and apparatus comes forward in accordance with the assessed maximum parameters.
- 3.12.5 **Work No. 3** – a temporary work area of five hectares associated with the construction of Work No. 1, Work No. 2 and Work No. 4 and consisting of a construction and laydown compound and car parking for up to 206 vehicles (including associated vegetation removal and groundworks).
- 3.12.6 **Work No. 4 - Onshore HVDC Cable Works:** consisting of two onshore HVDC cable circuits (two cables per circuit together with a fibre optic cable) of up to 20,000 meters in length (each); up to 25 joint bays per cable circuit for the jointing of those cable circuits; up to 6 link boxes and 6 link pillars which may be used for testing and maintenance of the onshore HVDC cable circuits once operational; 4 horizontal directional drilling ("HDD") crossings including entry/exit pits ; 1 trenchless (e.g. micro tunnelling) installation technique crossing including an entry/exit pit; and associated temporary construction compounds to allow for HDD and trenchless installation technique crossing works to be carried out.

- 3.12.7 The use of HDD is an alternative to trenching in locations where this is appropriate, taking into account environmental constraints and noting the technological constraints associated with HDD and the overall need for this construction method to be used. In addition, a trenchless installation method, explained and assessed in the environmental statement, will be used where the HVDC cables cross beneath railway infrastructure. The requirement for those methods to be used in the specified locations shown on the works plans is secured in the requirements to the Order.
- 3.12.8 **Work No. 5 - Onshore Connection Works:** consisting of two onshore HVDC cable circuits (up to 50 metres in length (each)) connecting Work No. 4 to the transitional joint bays, two transitional joint bays where the onshore HVDC cable circuits are jointed to what will become the marine HVDC cable circuits and two further HVDC cable circuits and ducts to connect to Work No. 6 (up to 250 metres in length (each)), with these cable circuits being installed via HDD beneath land between the transitional joint bays and mean high water springs ('**MHWS**'). The works include up to 4 entry/exit pits and associated temporary construction compounds for this purpose. In addition, Work No.5 includes two optical regeneration station buildings (each with maximum dimensions of 11 metres in length by 4 metres in width by 4 metres in height) associated with the fibre optic cables laid as part of the cable circuits, together with a compound for these of up to 35 metres in length and 18 metres in width, auxiliary power supply equipment and fuel storage in relation to the same and car parking for up to two vehicles.
- 3.12.9 **Work No. 6 – Intertidal HVDC Cable Works:** consisting of 2 marine HVDC cable circuits (two cables per circuit together with a fibre optic cable) between MHWS and mean low water springs ('**MLWS**') (the intertidal area) installed via HDD. This works package is included to avoid any issues with the overlapping onshore planning and marine planning jurisdictions between the mean high water mark and mean low water mark. All works in Work No.6 are undertaken beneath the surface of the land, with no above surface works proposed as part of Work No.6.
- 3.12.10 **Work No. 7 –** 1 HDD and 2 marine HVDC cable circuits of up to 109km (each) between the UK exclusive economic zone with France and Works No. 6, including works to facilitate HDD and a temporary work area for vessels to carry out intrusive activities in connection with Work No. 7.
- 3.13 Further associated development as may be necessary or expedient for the purpose of or in connection with a relevant part of the Authorised Development and which has been assessed in the environmental statement but which do not otherwise explicitly form part of a Work No. is also provided for. This is to ensure there is no impediment to delivery where works have been assessed and therefore examined, but are not explicitly referred to, and is an approach which is common to many granted DCOs.

4. **PROVISIONS OF THE ORDER**

- 4.1 The Order contains 50 operative provisions, each referred to as articles, and 15 Schedules. The articles are considered below in numerical order, split between the 'Parts' of the Order. The Schedules, their content and purposes are explained also.

5. **PART 1 – PRELIMINARY**

5.1 **Article 1 (*Citation and commencement*)** sets out what the Order may be cited as and when it comes into force.

5.2 **Article 2 (*Interpretation*)** sets out the meaning of the various terms used in the Order, including in the Schedules (save for the Deemed Marine Licence at Schedule 15 which contains consistent standalone definitions).

5.3 Particular definitions of note are as follows:

5.3.1 "*commence*" incorporates licensed marine activities in relation to the elements of the Authorised Development which are licenced by the deemed marine licence and material operations, as defined in section 155 of the Act to denote when development begins. Many requirements and/or conditions imposed on the marine licence are required to be discharged before development may be 'commenced'. Various activities are excluded from the definition of 'commence' and may be carried out prior to the discharge of pre-commencement requirements and/or marine licence conditions as follows:

- (A) in respect of the licensed marine activities, pre-construction surveys approved by the deemed marine licence; and
- (B) in respect of any other works comprised in the authorised development operations consisting of onshore site preparation works.

5.3.2 "*onshore site preparation works*" is defined to mean:

- (A) pre-construction archaeological investigations;
- (B) environmental surveys and monitoring;
- (C) site clearance;
- (D) removal of hedgerows, trees and shrubs;
- (E) investigations for the purpose of assessing ground conditions;
- (F) remedial work in respect of any contamination or adverse ground conditions;
- (G) receipt and erection of construction plant and equipment;
- (H) the temporary display of site notices and advertisements; and
- (I) erection of temporary buildings, structures or enclosures.

5.3.3 The ability to undertake the activities excluded from the definition of "*commence*" prior to the discharge of pre-commencement requirements and/or discharge of marine licence conditions is of critical importance to the Undertaker in the context of the anticipated construction programme, to respond to environmental constraints and adequately mitigate impacts on the environment. Some of the excluded works would allow the Undertaker to establish construction and welfare buildings and facilities, lay down temporary electricity and water services for construction, undertake surveys, and transport construction plant and equipment, in advance of programmed construction works commencing within the Order limits. Those activities excluded from the definition of "*commence*" and included as onshore site preparation works have all been assessed in the environmental statement. Where necessary, requirements are required to

- be discharged in relation to the onshore site preparation works, which may be approved separately, before those activities are undertaken.
- 5.3.4 All onshore site preparation works will be controlled by a construction environment management plan in relation to the relevant phase of the works, required in accordance with requirement 15 (discussed further below at 12.6.17) to be approved before any such works are carried out. This ensures adequate measures are secured and required to be taken to mitigate any adverse impacts of the carrying out of those works.
- 5.3.5 It is not considered the marine pre-construction surveys will give rise to any likely significant effects that require control, and as such they may be carried out before the discharge of conditions of the marine licence.
- 5.3.6 Therefore, it is considered there is effective control over these excluded activities in order to allow them to be carried out for the benefit of the overall construction programme for Authorised Development without unacceptable adverse effects arising.
- 5.3.7 Definitions of documents which are to be certified pursuant to article 43 (*Certification of plans etc.*) and Schedule 14 (*Certified documents*) have been included.
- 5.3.8 A new definition of discharging authority has been added, which is directly referable to the relevant requirements which discharge is required in relation to contained at Schedule 2 to the Order.
- 5.3.9 Terms specific to the works to be carried out and the infrastructure to be constructed and operated have been included, which are referred to in the Order, in particular Schedule 1 (*Authorised Development*).
- 5.3.10 A definition of "*maintain*" has been added which includes the power to "*inspect, upkeep, repair, adjust, alter, improve, preserve, remove, reconstruct and replace any part of the authorised development provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement*". This ensures that any required maintenance activities can be carried out where they are within the scope of the environmental impact assessment reported in the environmental statement.
- 5.3.11 "Order limits" is defined as the limits shown on the works plans within which the Authorised Development may be carried out, whose grid co-ordinates seaward of MHWS are set out in paragraph 3 of Schedule 1 to the Order;
- 5.3.12 The definition of "street" transposes the definition of "street" under section 48 of the New Roads and Street Works Act 1991 ("1991 Act") so that it is clear that footpath and highways are included within the definition of street under the Order.
- 5.3.13 "subsoil" is defined as any substrata of land that is below the surface of the ground.
- 5.3.14 The "undertaker" is defined as AQUIND Limited (company number 06681477) or the person who has the benefit of this Order in accordance with article 6 (Benefit of Order) and 7 (Consent to transfer benefit of Order).
- 5.4 Article 2(2) provides that a broad definition of 'rights over land' and 'imposition of restrictions' applies to the Order.

- 5.5 Article 2(3) provides that all measurements in the Order are approximate. The purpose of this is to ensure that if the measurements of the Authorised Development are marginally different to those stated in the Order there is no unnecessary issues regarding whether the works are permitted by the Order and in turn no impediment to the delivery of the Authorised Development. The inclusion of such a provision is common place in granted DCOs authorising linear infrastructure (see for example the National Grid (Hinkley Point C Connection project) Order 2016).
- 5.6 Article 2(4) provides that areas given in the book of reference are approximate as these are not covered by article 2(3). The purpose and effect of this provision is the same as set out above.
- 5.7 Article 2(5) confirms that reference to any statutory body includes reference to any successors from time to time.
- 5.8 Article 2(6) and 2(7) provides clarity regarding how references to points identified by letters and number and grid-co-ordinates are to be construed.
- 5.9 Article 2(8) provides that the expressions "include" or "includes" is to be construed without limitation.

6. PART 2 – PRINCIPAL POWERS

- 6.1 **Article 3 (*Development consent etc. granted by the Order*)** grants development consent for the Authorised Development to be carried out within the Order limits, subject to the provisions of the Order and the requirements provided at Schedule 2 to the Order.
- 6.2 Schedule 1 describes the Authorised Development in detail, split into 'work numbers', each of which represents different sections or parts of the Authorised Development (described above at paragraphs 3.12 – 3.13). Work number 1 to 5 (the 'onshore works', as defined in the Order) must be constructed landward of MHWS and work number 6 –7 (the 'marine works', as defined in the Order) must be constructed seaward of MHWS. Work number 6 which relates to works in the intertidal area where there is jurisdictional overlap between onshore and offshore planning is included as marine works to avoid confusion in relation to approvals pursuant to the requirements, which are to be approved by the Marine Management Organisation (the "**MMO**"). Work No.6 does not include any above ground works, being a HDD beneath Eastney Beach.
- 6.3 **Article 4 (*Authorisation of use*)** confirms that the undertaker is authorised to operate and use the Authorised Development following its construction, subject to any requirement to obtain any permit, licence or other obligation under any other legislation that may be required from time to time to authorise the operation of any part of the authorised development.
- 6.4 This article has been inserted for the avoidance of doubt and in accordance with section 120(3).
- 6.5 **Article 5 (*Power to construct and maintain the Authorised Development*)** provides for the construction and maintenance of the Authorised Development. Article 5 reflects the terms of the model provisions, but text has been added to make it clear that the powers conferred by the Article do not negate the need for the Undertaker to obtain further marine licences for offshore works not covered by the deemed marine licences included in the Order. Precedent for this article is included in the East Anglia Three Offshore Wind Farm Order 2017 at article 4, which includes narrower wording in relation to marine licencing only (article 4 (2)).

The East Anglia Three Offshore Wind Farm is similar to the Authorised Development, in that it comprises onshore and marine works.

- 6.6 **Article 6 (*Benefit of the Order*)** provides that subject to the provisions regarding the transfer of the benefit of the Order, the Order is for the benefit of the Undertaker only. This article overrides section 156(1) of the Act, which is permitted by section 156(2) of the Act.
- 6.7 **Article 7 (*Consent to transfer the benefit of the Order*)** provides that the Undertaker can, with the written consent of the Secretary of State:
- 6.7.1 transfer to another person any or all of the benefit of provisions of the Order (including the deemed marine licence, in whole or in part) in whole or in part and such related statutory rights; and
 - 6.7.2 grant to another person for a limited period any or all of the benefit of the provisions of the Order and such related statutory rights as may be agreed,
- except for in circumstances where the consent of the secretary of state is expressly stated not to be required (see paragraph 6.11 below).
- 6.8 The Order includes drafting which makes it clear that the provisions of Article 7 apply to the deemed marine licence and can be applied to the deemed marine licence either in whole or in part. Article 7(3) provides that the Secretary of State is required to consult the MMO before giving consent to transfer or grant to another person the whole or part of the benefit of the deemed marine licence.
- 6.9 Article 7(4) provides that the Secretary of State shall determine any application to transfer any part of the benefit of the Order to another person within no more than 8 weeks of the date on which the application is received by the Secretary of State.
- 6.10 Article 7(5) confirms which party has the benefit of the Order (or any part of it) and the rights granted by it and is subject to the restriction, liabilities and obligations contained within the Order where the Undertaker has transferred any benefit, or for the duration of any period during which the Undertaker has granted the benefit to any person. This is necessary to confirm what each person may do pursuant to the Order in such circumstances, the requirements that person is subject to when exercising the powers conferred by the Order, and who the Order is to be enforceable against in relation to the exercise of those powers.
- 6.11 The requirement to obtain the consent of the Secretary of State is not necessary in the circumstances referred to in article 7(6), with the acceptability of such circumstances having been considered by the Secretary of State and confirmed as appropriate as part of the decision on the Application. They include the following:
- 6.11.1 where the transferee or lessee is a holder of an interconnector licence under the Electricity Act 1989;
 - 6.11.2 in respect of the benefit of the Order in so far as it relates to Work No. 1 where the transferee is National Grid, so as to allow National Grid to undertake the connection works (or any part of them) to the Lovedean substation;
 - 6.11.3 in respect of the benefit of the Order in so far as it relates to the commercial telecommunications use of the fibre optic data transmission cables any person who Ofcom have directed the electronic communications code is to have effect in relation to pursuant to section 106 of the Telecommunications Act 2003, so as to allow any approved third party to operate the commercial telecommunications use;

- 6.11.4 in respect of the benefit of the Order in so far as it relates to the carrying out of the works required to replace an 11kilovolt overhead electricity line with an underground electricity cable so as to facilitate the safe passage of construction vehicles along the proposed access road where the transferee is SSE Energy Limited ("**SSE**"), so as to allow SSE as the owner of that apparatus to carry out those works; and
- 6.11.5 where the time limits for claims of compensation in respect of the acquisition of land or effects upon land as a consequence of the Order have elapsed.
- 6.12 It is considered that the above ability to transfer the benefit of the Order in so far as it relates to the relevant parts of the Authorised Development without the prior consent of the Secretary of State is important for the delivery and use of the Authorised Development, as it is anticipated that those persons so authorised will carry out or operate those parts of the Authorised Development. The exclusion of those persons from the need to obtain the consent from the Secretary of State is suitably limited to powers relating to appropriate parts of the Authorised Development by appropriate persons, and ensures the timely delivery and operation of the Authorised Development.
- 6.13 Article 7(7) provides that that the Undertaker must give notice in writing to the Secretary of State and if the transfer relates to the exercise of powers in their area to the MMO and the relevant planning authority prior to any transfer or grant in relation of the benefit of the Order taking effect. Article 7(8) to 7(10) provide requirements in relation to the notice and the information to accompany such notice required to be served pursuant to article 7(7).
- 6.14 The Marine and Coastal Access Act 2009 includes provisions relating to the transfer of a marine licence. Article 7(11) provides that the procedure included in sections 72(7) and (8) of that Act does not apply to a transfer of the whole or part of the benefit of the deemed marine licence contained at Schedule 15 to the Order. As mentioned above, article 7(3) provides that the Secretary of State is required to consult the MMO before giving consent to transfer or grant to another person the whole or part of the benefit of the provisions of the deemed marine licence. Article 7(11) therefore avoids unnecessarily duplicating requirements and process in relation to a proposed transfer.
- 6.15 Save for amendments to the article which are specific to the Authorised Development, notably the persons to whom the benefit of the whole or part of the Order can be transferred without the prior consent of the Secretary of State, precedent is provided for article 7 of the Order by many (if not all) made DCOs, see for example the East Anglia Three Offshore Wind Farm Order 2017.
- 6.16 **Article 8 (*Application, exclusion and modification of legislative provisions*)** has the effect of disapplying legislative provisions as they would apply but for this article.
- 6.16.1 Article 8(1) disapplies the provisions of regulation 6 of the Hedgerow Regulations 1997 and allows for non-important hedgerows within the Order limits and important hedgerows identified in Schedule 12 of the Order to be removed for the purpose of carrying out the Authorised Development (see the explanation of articles 41 and 42 at paragraphs 11.4 to 11.10 of this explanatory memorandum for further information). The form of wording used in this article has precedent in many made orders, including the Walney Extension Offshore Wind Farm Order 2014 and the East Anglia Three Offshore Wind Farm Order 2017.

- 6.16.2 Article 8(2) disapplies the provisions of the Neighbourhood Planning Act 2017 insofar as they relate to temporary possession. Whilst those provisions are not yet in force, this disapplication would provide that those provisions would not take effect at the expense of the temporary possession provisions contained in the Order, which are longstanding and have precedent in many granted DCOs (for further information in this regard see paragraphs 9.21 – 9.26 and 9.29 – 9.32 of this explanatory memorandum which explains articles 30 and 32 of the Order). The form of wording in this article has precedent in the Port of Tilbury (Expansion) Order 2019 at article 3(1)(g).
- 6.16.3 Article 8(3) disapplies the Town and Country Planning (Border Facilities and Infrastructure) (EU Exit) (England) Special Development Order 2020 in relation to any land that is within the Order limits so as to ensure no impediment to the delivery of the Authorised Development in a timely manner in connection with any temporary facilities to be delivered pursuant to that Order.
- 6.17 **Article 9 (Defence to proceedings in respect of statutory nuisance)** provides that no one is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out construction, operation or maintenance of the Authorised Development.
- 6.18 For the defence which the Article provides to apply the defendant must show that the nuisance relates to matters:
 - 6.18.1 In connection with construction and maintenance only, for which notice has been given under section 60 or consent obtained under section 61 of the Control of Pollution Act 1974;
 - 6.18.2 which are in accordance with controls and measures described in an approved construction and environmental management plan or as a consequence of noise levels set out in an approved noise management plan; or
 - 6.18.3 which cannot be reasonably avoided as a consequence of the construction or maintenance of the Authorised Development.
- 6.19 Article 9 is in the main a model provision, replicated in many, if not all, made DCOs (article 7 of the East Anglia Three Offshore Wind Farm Order 2017, for example). Article 9(1)(c) has been included to confirm no conflict with the requirements to be imposed in relation to noise during the operation of the Authorised Development and to provide certainty operations within those assessed and approved limits will not give rise to statutory nuisance proceedings. Precedent is provided for this inclusion of reference to approved control documents in the Southampton to London Pipeline Order 2017 at Article 41(1)(a)(ii).

7. PART 3 – STREETS

- 7.1 **Article 9A (Application of permit schemes)** provides for the application of the permit schemes made pursuant to the Traffic Management Act 2004 applicable within Portsmouth and Hampshire.
- 7.2 To confirm the mitigations to be provided in relation to traffic impacts in accordance with regulation 14(2)(c) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 the framework traffic management strategy has been produced. So as to ensure the Authorised Development is able to be

constructed in accordance with the management measures and programme controls provided for within the framework traffic management strategy, it is necessary to confirm its application to the grant of permits to be granted in connection with the works to construct the Authorised Development. Furthermore, to provide certainty of delivery in accordance with the framework traffic management strategy it is necessary to confirm that a permit may not be refused where conditions would be imposed which would not be in accordance with the framework traffic management strategy, which conflict with any approvals granted pursuant to the Order, or which would not be able to be complied with through the exercise of the powers conferred by the Order. Without these provisions contained at Article 9A(2)(a) and (b), certainty of delivery of the authorised development in accordance with the required mitigations would be fundamentally undermined.

- 7.3 Article 9A(2)(c) confirms that a permit may not be granted subject to a moratoria in relation to works on a highway following works being undertaken. The Authorised Development will be delivered in phases, with each onshore HVDC cable circuit to be delivered separately to one another to minimise impacts, and with joint bays to connect the lengths of cables to be delivered following the cable ducts and cables being installed. It is therefore the case that multiple phases of works will take place on the same stretches of highway and certainty is required that any potential moratoria will not frustrate this method of construction.
- 7.4 Article 9A(2)(d) relates to the grant of provisional advance authorisations and that a permit may not be granted for works in a location and time which one relates to (save for emergency works). It is essential that this provision is included within the Order, as without this the undertaker will not be able to forward plan works and reserve road space to carry out the works during the periods within which this is permissible in accordance with the framework traffic management strategy. In certain locations, albeit more generally also, controls on when works may be undertaken in the highway, including in proximity to one another, are provided for to minimise environmental impacts. The undertaker therefore must be able to forward plan by reserving road space in this manner and obtaining permits at the appropriate time in closer proximity to works being undertaken, as the permit schemes provide for.
- 7.5 Article 9A(3) and (4) address the approval process provided for by the permit schemes, which requires a permit application to begin again should proposed conditions not be agreed with. The potential consequence of this is that works are delayed being undertaken. Taking into account the programme restrictions provided for by the framework traffic management strategy, the need to re-apply for a permit and the timescales associated with this could have the potential to delay the delivery of elements of the Authorised Development by significant periods, potentially years in areas where the available window for undertaking works is significantly constrained, for instance in proximity to schools. To address this significant delivery risk, articles 9A(3) and 9(4) provide a process for agreement to be reached on the appropriate conditions, ensuring adequate controls are provided for and the Authorised Development is able to be delivered in a timely manner.
- 7.6 Article 9A(8) confirms that any decision to refuse a permit may be appealed in accordance with the provisions provided at Part 3 of the Order, ensuring any refusal of a permit can be resolved as efficiently as possible.
- 7.7 **Article 10 (Power to alter layout etc. of streets)** provides that the undertaker may for the purpose of constructing and maintaining the Authorised Development

permanently or temporarily alter the layout of any street (and carry out works ancillary to such alterations) whether or not within the Order limits and the layout of any street having a junction with such a street.

- 7.8 Article 10(2) requires the undertaker to restore to the reasonable satisfaction of the highway authority any street that has been temporarily altered pursuant to the article. Article 10(3) provides that the powers conferred by article 10(1) must not be exercised without the approval of the relevant street authority..
- 7.9 Article 10(4) provides that where a relevant street authority receives an application for approval under article 10(4) and fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was made, it is deemed to have granted consent. This provision is necessary to ensure the undertaker may undertake the works in an expeditious manner and to give full effect to the power to carry out the Authorised Development.
- 7.10 The power is included in the Order to ensure the undertaker has the ability to temporarily undertake works for road purposes (this article is not applicable to street works which are provided by Articles 11 and 12) as required to facilitate the construction of the Authorised Development, and is subject to appropriate safeguards to ensure those works are first approved by the relevant authority and restored to their reasonable satisfaction. Taking into account the need for flexibility to deliver the onshore HVDC cable circuits within the Order limits, it is not feasible to provide details of the alterations required in connection with the carrying out of the Authorised Development in the Order.
- 7.11 The article has precedent in many granted DCOs, including the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and the National Grid (Hinkley Point C Connection Project) Order 2016.
- 7.12 **Article 11 (Street works)** is broadly aligned with a model provision and authorises the Undertaker to carry out various works within streets which are within the Order limits. The additions to the model provision allow for the Undertaker to:
- 7.12.1 execute and maintain any works to provide hard and soft landscaping;
 - 7.12.2 carry out re-lining and placement of road markings; and
 - 7.12.3 removal and installation of temporary and permanent signage;
- which are considered to be necessary to be expressly stated given the nature of the works to be carried out, Work No. 4 in particular.
- 7.13 The consent of the highway authority is not required in connection with the carrying out of works pursuant to this power within the Order limits on the basis that statutory authority is provided, though the works themselves to be carried out pursuant to this power do require approval pursuant to Requirement 6 which requires detailed design approval to be obtained (discussed at paragraph 12.6.6. below), the traffic management strategies to be approved in accordance with requirement 25 (discussed at 12.6.28) and the grant of a permit (as discussed above at paragraphs 7.1 – 7.5).
- 7.14 Article 11(2) provides that the undertaker may, for the purposes of the authorised development, enter on so much of any other street whether or not within the Order Limits, for the purposes of carrying out the works within the street, subject to consent of the street authority. This is required to ensure that where it is necessary for the Undertaker to enter on a street not within the Order limits in connection with works on a street within the Order limits for purposes connected with the

authorised development, they may do so without the need for any further form of statutory approval.

- 7.15 Article 11(3) provides that where the relevant street authority receiving an application for consent under article 11(2) fails to notify the undertaker of its decision within 42 days beginning with the date on which the application was made, that authority will be deemed to have granted consent. This provision is necessary to ensure the undertaker may undertake the works in an expeditious manner and to give full effect to the power to carry out the Authorised Development.
- 7.16 Article 11(4) confirms that the authority given by article 11(1) and (2) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991. This is considered essential to confirm there is no need for the Undertaker to obtain any further form of authorisation, including a street works licence, to carry out street works.
- 7.17 Article 11(5) has been included to make clear that the definition of "apparatus" includes the onshore HVDC cable circuits to be laid in streets as part of the Authorised Development. This approach is similar to that taken in other made DCOs, with example precedent, albeit relating to different apparatus, provided for in article 12(4) of the Thorpe Marsh Gas Pipeline Order 2016.
- 7.18 Precedent for article 11 is included in many made DCOs, an example being article 10 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, which article 11 is an adapted version of. It is essential to facilitate the delivery of the Authorised Development.
- 7.19 **Article 12 (*Application of the 1991 Act*)** confirms the provisions of the New Roads and Street Works Act 1991 that apply to the carrying out of street works pursuant to the powers provided by article 11 and the temporary stopping up, alteration or temporary diversion of a street under article 13. The provisions of the New Roads and Street Works Act 1991 have been identified taking into account the nature of the works proposed in streets as part of the Authorised Development and to ensure the street authority retains sufficient control over the works to be carried out. Precedent for this article is provided by the Hornsea Two Offshore Wind Farm Order 2016 and the Hornsea One Offshore Wind Farm Order 2014.
- 7.20 **Article 13 (*Temporary closure, alteration, diversion or restriction of streets, public rights of way and permissive paths*)** provides for the temporary closure, alteration, diversion or restriction of any streets, public rights of way or permissive paths, for the purposes of carrying out the Authorised Development. This article largely follows the model provision in this regard, save for:
- 7.20.1 there is an additional power given to the Undertaker which allows it to use any street or public right of way temporarily stopped up as a temporary working site; and;
- 7.20.2 there is a confirmation that where the Undertaker provides any temporary diversion under article 13(3) the temporary alternative route is not required to be of a higher standard than the temporarily stopped up street or public right of way.
- 7.21 Article 13(5) provides that the Undertaker must not temporarily close, alter, divert or restrict any streets, public rights of way or permissive paths mentioned in article 13(1) (excluding those listed in Schedule 8 for which only consultation is required) without first obtaining the consent of the relevant street authority, which may attach

reasonable conditions to any consent, but such consent may not be unreasonably withheld or delayed. This provision is considered to provide adequate safeguards for the street authority, whilst ensuring the undertaker may undertake the works in an expeditious manner.

- 7.22 Precedent for article 13 of the Order is provided in the East Anglia Three Offshore Wind Farm Order 2017, with another precedent example provided at article 15 to the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.
- 7.23 **Article 14 (Access to works)** is a common provision to made DCOs adapted from Article 12 of the model provisions which permits the Undertaker to form new or to improve existing means of access in the locations specified on the access and rights of way plans. Other means of access or works can also be provided in other locations reasonably required for the Authorised Development, with the approval of the relevant highway authority, in consultation with the relevant planning authority.
- 7.24 Article 14(1) is adapted so as to relate to requirement 10, which provides the process for the approval of highway accesses, including the information that must be provided for such approval to be obtained. By doing so, there is a clear link which requires the relevant highway authority to have approved the works to be undertaken before they are undertaken.
- 7.25 Article 14(2) provides that an application for approval under paragraph (1) is to be determined in accordance with the mechanism set out in Schedule 3 of the Order, as the matter of approval is principally addressed by the discharge of requirement 10.
- 7.26 Whilst the principle of this article has precedent in many made DCOs, the version included in the Order is bespoke, which responds to requests to clearly confirm the process to be followed where works in relation to accesses are to be undertaken.
- 7.27 **Article 15 (Agreements with street authorities)** is a modified version of model provision article 13. The article included in the Order allows street authorities and the Undertaker to enter into agreements relating to any stopping up, alteration or diversion of a street and the carrying out of any works referred to in article 11. Elements of the model provision not relevant to the Authorised Development have been removed.
- 7.28 The provision has precedent in other made DCOs, including article 13 of the York Potash Harbour Facilities Order 2016, and in essence allows for any agreements to be entered into where necessary and subject to appropriate statutory authority pursuant to the Order rather than any such agreements being needed pursuant to another statutory regime, which would undermine the benefits of the single consent to be provided by the Order.
- 7.29 **Article 16 (Traffic regulation)** enables the undertaker to impose traffic regulations orders ("TROs") necessary in connection with the safe construction of the Authorised Development given the extent of the works proposed in, on or under highway land. This article is essential to ensure the undertaker may undertake the works in an expeditious manner and to give full effect to the power to carry out the Authorised Development.
- 7.30 This article is not a model provision, but precedent for it can be found in article 18 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, article 40 of the National Grid (Hinkley Point C Connection Project) Order 2016 and article 61 of the Silvertown Tunnel Order 2018. These projects also involved works within the highway which required the undertaker to obtain powers to control speeds and use for safety and operational reasons.

- 7.31 Article 16(1) enables the Undertaker to impose TROs in respect of any road for the purposes of or in connection with the Authorised Development, whether or not within the Order limits, where consent has been obtained from the relevant traffic authority.
- 7.32 Of note and bespoke to the Order, article 16(1)(f) confirms the undertaker may place traffic signs on or near a street, subject to and in conformity with the directions issued by the Secretary of State pursuant to powers conferred by section 64, 65 and 85 of the Road Traffic Regulations Act 1984. This provision is included as it is known it will be necessary for traffic signs to be utilised in connection with the construction of the Authorised Development and addresses the need to obtain any other consent/approval required to do so.
- 7.33 Article 16(2) and 16(3) provide a notification process whereby the Undertaker must notify and advertise of its intention to impose a TRO in a road prior to the TRO coming into effect. The proposed timeframes provided for in article 16(3) are consistent with those provided for in the River Humber Gas Pipeline Replacement Order 2016. Article 16(3)(b) also provides for the traffic authority to specify the manner in which any TRO made must be advertised by the Undertaker, ensuring local processes can be applied without the need to go outside the single consent to be provided by the Order.
- 7.34 Article 16(4) provides that any TRO made under this article has the same effect as if it was made by the traffic authority or local authority in whose area the street is located. This gives the Undertaker statutory power to enforce any TRO. Article 16(5) confirms that any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the Undertaker from time to time. These provisions are consistent with article 18 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.
- 7.35 Article 16(7) provides where a highway authority fails to notify the Undertaker of its decision within 42 days following the receipt of an application, it is deemed to have given consent. This is to ensure the Undertaker can make any required TROs in a timely manner to allow the control of traffic on the relevant roads and ensure the expeditious construction of the Authorised Development in the highway. This is necessary to allow the Undertaker to exercise its powers in an efficient manner, whilst also providing the highway authority a sufficient amount of time to either approve or reject the application. Precedent for this provision is provided in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.

8. **PART 4 – SUPPLEMENTARY POWERS**

- 8.1 **Article 17 (*Discharge of water*)** is a model provision (article 14) which enables the Undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the Authorised Development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions.
- 8.2 The model provision has been updated to refer to the Environmental Permitting (England and Wales) Regulations 2016 instead of section 85 of the Water resources Act 1991 (which has been repealed). The article has also been updated so that if the Undertaker makes an application for consent under the provisions of the article but the relevant person receiving this does not notify the undertaker of its decision within 20 working days of the application then consent will be deemed to have been given. The inclusion of provisions for deemed approval is reasonable

and aligns with the objectives and scheme of the Act to ensure efficient delivery of nationally significant development.

- 8.3 The Article has precedent in other made DCOs, including article 13 of the York Potash Harbour Facilities Order 2016 and article 17 of the Thorpe Marsh Gas Pipeline Order 2016.
- 8.4 **Article 18 (Protective work to buildings)** is based on a model provision that allows the Undertaker, at its own expense, to carry out protective works to any building within the Order limits for the unlikely event it is necessary or expedient to do so. Such protective works can be undertaken at any time before or during the carrying out in the vicinity of the building of any part of the Authorised Development, or at any time up to the end of the period of five years beginning with the day on which that part of the authorised development is first brought into operational use.
- 8.5 In addition to the powers to undertake protective works the article includes powers to enter any building and land within its curtilage to survey to determine whether protective works are needed and there are powers to enter adjacent land to carry out any protective works.
- 8.6 Article 18(5) provides that before exercising the right to carry out protective works to a building, or to enter a building or land within its curtilage, or to enter onto adjacent land, notice must be served on the owners and occupiers of the building or land not less than 14 days' prior to the undertakers intention to exercise that right. Where such a notice is served the owner or occupier of the building or land concerned may by serving a counter-notice within the period of 10 working days, beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 45 (arbitration).
- 8.7 The article also includes compensation provisions both in relation to the consequences of the protective works being undertaken, and also where protective works are undertaken but they are not adequate to protect the building from damage (within the period of five years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use).
- 8.8 The model provision has been modified to provide that section 13 (refusal to give possession to acquiring authority) of the Compulsory Purchase Act 1965 applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the Act.
- 8.9 The purpose of this article is to provide necessary powers to the Undertaker to allow them to undertake protective works to buildings, such as underpinning, in the unlikely event that such a need arises, in accordance with the clear procedure provided for.
- 8.10 This power is common in DCOs and the drafting has been based on other made DCOs, such as article 17 of the National Grid (Richborough Connection Project) Development Consent Order 2017.
- 8.11 **Article 19 (Authority to survey and investigate the land)** is a modified model provision which allows the Undertaker to survey, monitor and investigate land (including any watercourses, groundwater, static water bodies or vegetation on the land), make trial holes, boreholes and excavations in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil

and remove samples and to carry out ecological, archaeological investigations and monitoring on such land, including the digging of trenches. The undertaker may place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes, boreholes and excavations.

- 8.12 The model provision has been modified as follows:
- 8.12.1 sub paragraph 4 provides that no trial holes, boreholes and excavations may be made in land forming part of a railway or land held by or in right of the Crown without the consent of Network Rail or the Crown respectively;
 - 8.12.2 if a highway or street authority after having received an application to make trial holes within a highway or private street fails to notify the Undertaker within 28 days of having received the application it will be deemed to have provided consent; and
 - 8.12.3 section 13 (refusal to give possession to acquiring authority) of the Compulsory Purchase Act 1965 will apply in respect of entry onto, or possession of land under the article.
- 8.13 This power is common in DCOs and the drafting has been based on other made DCOs, such as article 16 of the York Potash Harbour Facilities Order 2016 and article 18 of the Thorpe Marsh Gas Pipeline Order 2016.

9. **PART 5 – POWERS OF ACQUISITION**

- 9.1 **Article 20 (Compulsory acquisition of land)** entitles the Undertaker to compulsorily acquire land within the permanent limits as shown on the land plans and described in the book of reference that is required for the construction, operation or maintenance of the Authorised Development or to facilitate it, or as is incidental to it. Sub-paragraph 1 of the article broadly follows the model provision.
- 9.2 Sub-paragraph (2) of the model provision has been deleted, so as to give effect to article 24, which, in keeping with the model provision provides for the extinguishment of rights of way (only) on the earlier of the date of the acquisition of the land by the Undertaker or the date of entry on to the land by the Undertaker. All matters relating to the extinguishment and compensation for private rights of way are therefore addressed in article 24, rather than also being dealt with in article 20, which is a common approach in many made DCOs.
- 9.3 Sub-paragraph (2) of the article confirms that land acquired for the purposes authorised by the Order may be used for any other purposes in connection with or ancillary to the undertaking.
- 9.4 This power is necessary to ensure that the Undertaker can have exclusive possession and control of land that is required for the Authorised Development.
- 9.5 This article is subject to articles 22 (Time limit for exercise of authority to acquire land compulsorily), 23 (Compulsory acquisition of rights), 27 (Acquisition of subsoil and airspace only), 28 (acquisition of parts of certain properties), 29 (rights under or over streets), 30 (Temporary use of land for carrying out authorised development), and 47 (Crown rights). These articles all impose restrictions on the exercise of powers under article 20.
- 9.6 **Article 21 (Statutory authority to override easements and other rights)** provides for the avoidance of doubt that the carrying out or use of the Authorised Development and the doing of anything else authorised by the Order is authorised for the purpose specified in section 158(2) (nuisance: statutory authority) of the Act

and that the Undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to user of land arising by virtue of contract. It also provides by virtue of section 152 of the Act for the payment of compensation under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This article reflects the provisions of 152 and 158 of the Act. Precedent for this article is provided at article 25 of The Hinkley Point C (Nuclear Generating Station) Order 2013.

- 9.7 **Article 22 (Time limit for exercise of authority to acquire land compulsorily)** is a modified model provision which requires the Undertaker to exercise its powers to acquire or possess land within 5 years of the date on which the Order comes into force, although the Undertaker may remain in occupation of land entered pursuant to article 30 beyond that period.
- 9.8 **Article 23 (Compulsory acquisition of rights and the imposition of restrictive covenants)** entitles the Undertaker to acquire rights and impose restrictive covenants over so much of the Order land within the permanent limits as is described in the book of reference and shown on the land plans. By reference to those documents, the extent of the rights that may be acquired pursuant to article 23 is clearly defined in a granular manner.
- 9.9 The ability to acquire new rights ensures that the Undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) as the Authorised Development is implemented, which is considered to be a proportionate approach to ensure the necessary rights and restrictions are in place to deliver and maintain the Authorised Development.
- 9.10 Sub paragraphs (4) and (5) provide, where the acquisition of new rights or the imposition of a restriction under the Order is required for a statutory Undertaker, that the Undertaker may, with the consent of the Secretary of State transfer the powers to the statutory Undertaker.
- 9.11 This article is a departure from the model provisions, however precedent for this article is provided by article 17 of the East Anglia THREE Offshore Wind Farm Order 2017.
- 9.12 Sub-paragraph (6) is included to confirm that that the article does not authorise the acquisition of rights over, or the imposition of restrictions affecting, an interest which is for the time being held by or on behalf of the Crown, reflecting the position provided for by section 135 of the Act.
- 9.13 **Article 24 (Private rights of way)** would extinguish all private rights of way over land subject to compulsory acquisition from the date of acquisition of land or on the date of entry, whichever is earlier. This is narrower than a general extinguishment of an all private rights power seen in other made DCOs, but not necessarily an approach which is appropriately considered. Sub-paragraph (2) provides that private rights of way over any land that is owned by the Undertaker within the Order limits would be extinguished on appropriation of the land by the Undertaker for the purposes of the Order. Sub-paragraph (3) provides that all private rights of way over land that is temporarily possessed by the Undertaker would also be suspended and unenforceable.
- 9.14 The article makes provision in relation to the payment of compensation and there is a saving in the article in respect of statutory undertakers. Sub-paragraph (5) provides that the extinguishment will not apply where the Undertaker serves notice to this effect prior to acquiring, appropriating, entering or taking temporary

possession of the land in question. The provisions will also not apply where an agreement to this effect is made between the undertaker and the owner of the land benefitting from the private right of way.

- 9.15 Precedent is provided for this article at article 28 of The Hinkley Point C (Nuclear Generating Station) Order 2013.
- 9.16 **Article 25 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)** applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of powers of compulsory acquisition pursuant to the Order. It gives the Undertaker the option to acquire land via the process set out under the 1981 Act, rather than the notice to treat procedure. This article has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016, as well as to ensure it is clear it authorises the Undertaker and to refer to section 134 of the Act.
- 9.17 **Article 26 (Modification of Part 1 of the Compulsory Purchase Act 1965)** provides for amendments to Part 1 of the Compulsory Purchase Act 1965 to ensure consistency between the provisions of the order and the Compulsory Purchase Act 1965 (as amended by the Housing and Planning Act 2016) as applied by section 125 of the Act. Broad precedent is provided for these modifications by article 25 of the Silvertown Tunnel Order 2018. In accordance with section 126(2) of the Act these provisions are modified only to the extent necessary to ensure that they apply properly to the compulsory acquisition powers authorised by the Order.
- 9.18 **Article 27 (Acquisition of subsoil and airspace only)** permits the Undertaker to acquire only the subsoil of land which is to be compulsorily acquired (either pursuant to article 20 or 23). This article is appropriate in the context of cables to be laid underground as part of the Authorised Development, where acquisition of the 'entire' freehold or right over the same may not be required, therefore allowing for the acquisition of the minimum interest needed to deliver the Authorised Development. This is a standard provision included in many made DCOs, including for example article 26 of the Port of Tilbury (Extension) Order 2019.
- 9.19 **Article 28 (Acquisition of part of certain properties)** provides the requirements in relation to the acquisition of part of a property in place of section 8(1) of the 1965 Act and contains a procedure enabling the relevant owner in certain circumstances to require the whole to be taken, with disputes being determined by the Lands Chamber of the Upper Tribunal. The acquisition of parts of larger properties may be necessary in accordance with the Authorised Development and this article is included in relation to such potential acquisitions. This is a model provision common across made DCOs, with an example of precedent provided by article 27 of the Thorpe Marsh Gas Pipeline Order 2016.
- 9.20 **Article 29 (Rights under or over streets)** is a model provision which allows the Undertaker to enter on and appropriate interests within streets where required for the purpose of the Authorised Development without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances. Precedent for the inclusion of this power is provided for by article 28 of the Thorpe Marsh Gas Pipeline Order 2016.
- 9.21 **Article 30 (Temporary use of land for the construction of the Authorised Development)** allows two categories of land to be temporarily used for the construction of the Authorised Development. These are:

- 9.21.1 the land specified in Schedule 10 of the Order for the purposes specified in that Schedule; and
- 9.21.2 any other Order land where no notice of entry or general vesting declaration has been served.
- 9.22 In addition to the ability to enter onto and take temporary possession of land within the Order limits, article 30(1)(b) – (e) provide various activities that may be undertaken pursuant to the article, excluding in relation to Plot 10-14 as identified in the book of reference and on the land plans which is the Eastney Lake and Milton Piece Allotments, where those activities may not be undertaken. This list has been modified so as to include activities required to be carried out to facilitate the delivery of the Authorised Development.
- 9.23 Save in respect of Plot 10-14, the Undertaker must give not less than 10 working days' notice of its intention to exercise its powers under this article and may not occupy the land for longer than the period specified in the article. Prior to vacating the land the Undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, subject to not being required to undertake any of the activities listed at article 30(4)(a) – (g).
- 9.24 In respect of Plot 10-14, the purposes for which temporary possession may be taken is to clear any breakout of bentonite (non-toxic CEFAS approved clay) drilling lubricant in connection with the undertaking of a HDD beneath the Eastney Lake and Milton Piece Allotments, the undertaker must when entering on and taking temporary possession of any part of Plot 10-14 provide so much notice as is reasonably practicable in the circumstances on the owners and occupiers of the land (which may include notification following the taking of temporary possession where necessary). The undertaker may also not remain in possession of this land once any breakout of bentonite drilling fluid has been cleared. This is to ensure that land is permitted to be accessed for that purpose only in a timely manner, and possession is not permissible beyond the period for clearing any breakout of bentonite drilling fluid. This drafting is bespoke to the Authorised Development.
- 9.25 Compensation is payable to the owners and occupiers of land who suffer loss or damage arising from the Undertaker's exercise of the power.
- 9.26 The article is based upon but includes departures from the model provisions so as to make it specific to the Authorised Development, and there is precedent for this approach in many granted DCOs (see article 23 of the East Anglia THREE Offshore Wind Farm Order 2017).
- 9.27 **Article 31 (Time limit for exercise of authority to temporarily use land for carrying out the Authorised Development)** is a model provision which imposes a time limit of 5 years for the exercise of powers to temporarily use land for the construction of the Authorised Development. Sub-paragraph (2) provides that the Undertaker may remain in the in possession of land after the end of that period if the land was entered and possession was taken before the end of the period.
- 9.28 This article gives the Undertaker 5 years to issue 'notices to treat' or to execute 'general vesting declarations' to acquire the land that is subject to the power of compulsory acquisition. These are the two main procedural methods by which the process of compulsorily acquiring land may be undertaken should the Order be made. Precedent for this article is provided for at article 21 of the Silvertown Tunnel Order 2018.
- 9.29 **Article 32 (Temporary use of land for maintaining the Authorised Development)** provides the power for the Undertaker to enter upon and take

temporary possession of land within the Order limits (except for houses, gardens or any other building for the time being occupied) reasonably required for the purpose of maintaining the Authorised Development.

- 9.30 The Undertaker must give not less than 28 days' notice before entering on and taking temporary possession of land under this article, save for where the Undertaker has identified a potential risk to the safety of the Authorised Development, the public or the surrounding environment, where the Undertaker must give such period of notice as is reasonably practical in the circumstances. In Addition, the Undertaker may only remain in possession of the land for so long as may be reasonably necessary to carry out the maintenance of the Authorised Development.
- 9.31 Before giving up possession of any land of which temporary possession has been taken under this article, the undertaker is required to remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land. Provisions for the payment of compensation for any loss or damage arising from the exercise in relation to the land of the provisions of the article are provided.
- 9.32 Article 32 (12) makes clear this power is only effective for the period of 5 years beginning with the date on which the Authorised Development is brought into operational use, except where the authorised development is replacement or landscape planting where the period is 5 years beginning with the date on which that part of the replacement or landscape planting is completed. This ensures he power is appropriately scoped to be temporary in nature.
- 9.33 **Article 33 (Statutory Undertakers)** is based on the model provision subject to some amendments and it provides for the acquisition of land belonging to statutory undertakers identified in the Book of Reference. The additions made to the model provision are as follows:
- 9.33.1 to construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory Undertakers and other like bodies within the Order limits; and
- 9.33.2 for the purposes of article 10 (Street works) to remove or reposition apparatus belonging to statutory Undertakers which is laid beneath any of the streets within the Order limits.
- 9.34 These additions are required taking into account the nature of the Authorised Development and the interaction it will have with apparatus belonging to statutory undertakers.
- 9.35 The article is subject to Schedule 13 (Protective provisions), which contains provisions for the protection of certain statutory undertakers to ensure their continued ability to carry out their functions despite the interference with their rights/apparatus required to facilitate the delivery of the Authorised Development.
- 9.36 Like provisions are common in made DCOs, with article 31 of the Thorpe Marsh Gas Pipeline Order 2016 being an example of such precedent.
- 9.37 **Article 34 (Recovery of cost of new connections)** provides that persons who have to create a new connection following the exercise of powers under article 33 (Statutory undertakers) may recover the costs of new connections from the Undertaker. It is a common provision in many made DCOs, with article 32 of the Thorpe Marsh Gas Pipeline Order 2016 being an example of such precedent. .
- 9.38 **Article 35 (No double recovery)** provides that compensation will not be payable in respect of the same matter both under this Order and under any other

enactment, any contract or any rule of law. The principle of equivalence, that a claimant in a compulsory purchase matter will be compensated for no more than and no less than his loss, is long established and no part of the compensation code conflicts with this principle. Similar provisions have been included in many granted DCOs (see for example article 38 of the Silvertown Tunnel Order 2018).

- 9.39 **Article 36 (*Special category land*)** provides that any special category land required by the Undertaker for the purposes of exercising the Order rights will be permanently or, in the case of land to be used on a temporary basis, temporarily discharged from all rights, trusts and incidents to which it was previously subject. The special category land is the land to be identified in the book of reference as forming part of a common, open space or fuel or field allotment.
- 9.40 The Order seeks powers to acquire rights over land forming part of a common, open space or a fuel or field allotment. Under section 132 of the Act, the Order may include such provision if the Secretary of State is satisfied that the special category land, when burdened with the Order rights, will be no less advantageous to any affected persons than it was before the imposition of those rights. The Undertaker believes that this will apply in relation to the rights that it will be seeking under the Order over special category land. This position is therefore recorded in the preamble to the Order, further to the requirement in section 132(2)(b) of the Act.
- 9.41 Precedent for this article is provided by article 31 of the National Grid (Richborough Connection Project) Development Consent Order 2017.

10. **PART 6 – OPERATIONS**

- 10.1 **Article 37 (*Deemed marine licence under the 2009 Act*)** grants the deemed marine licence included in Schedule 15. The deemed consent is provided for under 149A of the Act and under Part 4 of the Marine and Coastal Access Act 2009. The deemed marine licence is discussed in more detail at paragraphs 12.21 – 12.43 of this explanatory memorandum.

11. **PART 7 – MISCELLANEOUS AND GENERAL**

- 11.1 **Article 38 (*Protective provisions*)** provides for Schedule 13 which protects the interests of certain statutory undertakers, to have effect.
- 11.2 **Article 39 (*Application of landlord and tenant law*)** is a provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the Authorised Development or the right to operate the same or any agreement entered into by the Undertaker for the construction, maintenance, use or operation of the Authorised Development. This power is common across made DCOs, with article 33 of the Thorpe Marsh Gas Pipeline Order 2016 being one such precedent example.
- 11.3 **Article 40 (*Operational land for the purpose of the 1990 Act*)** is a model provision which has the effect of ensuring that the land on which the Authorised Development is constructed will be "operational land" under section 263 of the 1990 Act. This power is common across made DCOs, with precedent examples provided by article 32 of the York Potash Harbour Facilities Order 2016 and article 34 of the Thorpe Marsh Gas Pipeline Order 2016.
- 11.4 **Article 41 (*Felling or lopping of trees and removal of hedgerows*)** provides that the Undertaker may fell, lop, prune, coppice, pollard or reduce in height any tree or cut back the roots of any tree which is not subject to a tree preservation order or shrub to prevent it obstructing or interfering with the construction, maintenance or

operation of the Authorised Development. Compensation is provided for if loss or damage is caused. The article is consistent with the model provision, except the Undertaker has further limited the power so that it does not apply to trees subject to a tree preservation order which are subject to article 42 (Trees subject to a tree preservation order).

- 11.5 The article also provides the Undertaker with the power to remove hedgerows within the Order limits (Article 41(4)(a), and important hedgerows in so far as they are identified in Schedule 12 (Article 41(4)(b)). On the basis that important hedgerows are identified for removal, and that the appropriateness of their removal to facilitate the delivery of the Authorised Development may be considered by the Secretary of State when making their decision in relation to the Order, article 41(5) removes any obligation upon the undertaker to secure any consent under the Hedgerow Regulations 1997, thereby ensuring the delivery of the Authorised Development and the benefits associated with it.
- 11.6 The inclusion of this power in the Order is necessary to ensure there is no impediment to the delivery of the Authorised Development, noting that appropriate controls and working methods regarding any such felling, lopping and removal are to be provided for by virtue of the Requirements to the Order and the control documents which relate to them.
- 11.7 The inclusion of this power in DCOs is common, with examples of precedent provided at article 37 of the Thorpe Marsh Gas Pipeline Order 2016 and article 40 of the National Grid (Richborough Connection Project) Development Consent Order 2017.
- 11.8 **Article 42 (*Trees subject to tree preservation orders*)** provides that the Undertaker may fell, lop, prune 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 the construction, maintenance or operation of the Authorised Development. Compensation is provided for if loss or damage is caused.
- 11.9 The article is based on the model provision save that the article applies generally to any tree subject to a tree preservation order made before and after the date of the Order coming into effect and either within or overhanging the Order limits, rather than trees specified in a schedule. The inclusion of this amendment ensures there is no impediment to the delivery of the Authorised Development in the future.
- 11.10 The inclusion of this power in made DCOs is common, with an example of the same power being approved by the Secretary of State previously at article 41 of the National Grid (Richborough Connection Project) Development Consent Order 2017.
- 11.11 **Article 43 (*Certification of plans etc.*)** is a model provision which provides for the submission of the various documents referred to in the Order (such as the book of reference, plans and the environmental statement) to the Secretary of State so that they can be certified as being true copies. It is modified by reference to a schedule, which details all relevant documents to be certified pursuant to the Order. Such a provision is common among made DCOs.
- 11.12 **Article 44 (*Service of notices*)** follows the approach taken in article 44 of the Hinkley Point C (Nuclear Generating Station) Order 2013. It sets out the manner in which notices or other documents required or authorised to be served for the purposes of the Order are to be served.
- 11.13 **Article 45 (*Arbitration*)** is an arbitration provision which is based upon article 42 of the model provisions and governs what happens when two parties disagree in

the implementation of any provision of the Order. The matter is to be settled by arbitration, with the Secretary of State to determine who is to be appointed as the arbitrator where this cannot be agreed between the parties.

- 11.14 **Article 46 (*Procedure in relation to requirements, appeals, etc.*)** has the effect of providing that Schedule 3 (Procedure for approvals, consents and appeals) applies to the discharge of requirements included in Schedule 2 of the Order. Whilst not a model provision, a similar approach was adopted in the Hinkley Point C (Nuclear Generating Station) Order 2013.
- 11.15 **Article 47 (*Crown rights*)** is not a model provision, but it reflects the terms of section 135 of the Act. Precedent for this article is provided at article 32 of the Southampton to London Pipeline Order 2020.
- 11.16 **Article 48 (*Removal of human remains*)** disapplies section 25 of the Burial Act and replaces it with an alternative procedure for managing the removal of any human remains disturbed during the course of carrying out the Authorised Development. Article 48 is based upon article 17 of the model provisions.
- 11.17 The article is amended from the model provision with paragraph (12) excluding the requirement to give notice before the removal of remains which the undertaker is satisfied were interred more than 100 years ago and that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article. This approach has precedent in the Crossrail Act 2008.
- 11.18 Paragraph (17) applies section 239 of the Town and Country Planning Act 1990 to land and rights over land acquired under the order and permits the use of such land notwithstanding any obligation or restriction imposed under ecclesiastical law or law relating to burial grounds, save as provided for in the remainder of the article. Paragraph (18) excludes the Town and Country Planning Act (Churches, Places of Worship and Burial Grounds) Regulations 1950.
- 11.19 The effect of article 48 is to consolidate the applicable provisions of existing regimes regulating the removal of human remains, to ensure archaeological remains are recovered appropriately without causing unnecessary and unacceptable delay to the implementation of the Authorised Development. Precedent for the article is provided by article 20 of the River Humber Gas Pipeline Replacement Order 2016.
- 11.20 **Article 49 (*Saving provisions for Trinity House*)** provides that nothing in the Order prejudices or derogates from any of the rights, duties or privileges of Trinity House

12. **SCHEDULES**

Schedule 1 – Authorised development

- 12.1 Schedule 1 describes the Authorised Development in detail, split into 'work numbers', each of which represents different elements of the Authorised Development. This split of the Authorised Development between different work numbers enables the Order to refer to different parts of the Authorised Development by citing the relevant work number.
- 12.2 The works set out in Schedule 1 to the Order are explained in paragraphs 3.12 to 3.13 above.

Schedule 2 – Requirements

- 12.3 Schedule 2 sets out the requirements which apply to the carrying out of and operation of the Authorised Development under the Order. The requirements in Schedule 2 are equivalent to planning conditions imposed on a planning permission.
- 12.4 Approvals are to be sought from the relevant planning authority, following consultation with any other relevant bodies, save for where approvals are more appropriately provided by the relevant highway authority or the local lead flood authority.
- 12.5 The approach developed in relation to the requirements takes into account the nature of the works comprised within the Authorised Development and reflects the Undertakers expectations for in terms of the control documents that will be adhered to and prepared.
- 12.6 The purpose and effect of requirements 1 to 27 is as follows:
- 12.6.1 **Requirement 1 (interpretation)** provides definitions for key terms used in the requirements but not otherwise used in the order and also provides general provisions relating to the interpretation of the requirements.
- 12.6.2 **Requirement 2 (time limits)** specifies the period within which the Authorised Development must be commenced and also provides for the service of written notice by the Undertaker on each local planning authority not less than 5 working days prior to the proposed date on which the Authorised Development is to be commenced.
- 12.6.3 **Requirement 3 (phases of the authorised development)** provides for the production and submission of a written scheme setting out all the phases of the Authorised Development landwards of MHWS before the Authorised Development landwards of MHWS including the onshore site preparation works may commence. The requirement also provides that the Authorised Development landwards of MHWS must be carried out in accordance with the written scheme submitted (as may be updated from time to time following the further approval by the relevant planning authority). Essentially, Requirement 3 allows for the Authorised Development to be broken down into phases, ensuring approvals required can be obtained in a manageable and co-ordinated manner.
- 12.6.4 **Requirement 4 (Converter station option confirmation)** requires the Undertaker to confirm which converter station perimeter option shown on the Converter Station Parameter Plan the converter station will be constructed within prior to the commencement of any works within Work No.2. This is to ensure there is certainty regarding the siting of the converter station before the works to be carried out in relation to it are commenced.
- 12.6.5 **Requirement 5 (Converter station and optical regeneration statement parameters)** provides limitations on the location and size of buildings which form part of the converter station and the optical regeneration stations. In relation to the converter station, table WN2 confirms the parameter zones within which the individual buildings must be located, which are by reference to the converter station and telecommunications buildings parameter plan. In relation to the optical regeneration stations, table WN6 provides details of the maximum building envelope parameters for the buildings and the associated compound, with the location for those confirmed on the optical regeneration station parameter plan. The effect of

this requirement is to ensure the buildings are constructed in a manner which is within the parameters of the Authorised Development environmentally assessed.

- 12.6.6 **Requirement 6 (Detailed design approval)** provides that the Undertaker must obtain approval for certain design related matters in relation to the phases of Works No.2, Works No.3, Works No.4 and Works No.5 from the relevant planning authority in consultation with any relevant third parties prior to the commencement of the construction of that relevant phase of the works. By virtue of requirement 5 the details must be in accordance with the parameter plans, and where relevant and they also must be in accordance with the limits of deviation provided for on the works plans. The required matters to be approved are specific to the works which they relate to and the works must be carried out in accordance with the details approved (save for where the details are indicative, in which case the works must substantially in accordance with those indicative details). This is to ensure comprehensive design information is provided in advance of works commencing and that the works are carried out as approved.
- 12.6.7 Requirement 6(8) is provided to ensure the external appearance of the buildings within Work No.2 do not change over time from that which is approved, and requirement 6(9) to ensure appropriate enclosures are installed before operation. Requirement 6(10) and (11) secure the method of the trenchless installation in the relevant locations where this is to be undertaken by reference to the location as shown on the works plans.
- 12.6.8 **Requirement 7 (Provision of landscaping)** provides that no phase of Works No. 2, Works No.4 or the construction of the optical regeneration stations within Works No. 5 shall commence until a detailed landscaping scheme in relation to that phase (which accords with the outline landscaping and biodiversity plan) has been submitted to and approved by the relevant planning authority and where related to any phase of Works No. 2 in consultation with the South Downs National Park Authority. This is to ensure the landscaping required to mitigate impacts associated with the Authorised Development are confirmed before those works are commenced. Certain details are required to be included within the detailed landscaping schemes.
- 12.6.9 **Requirement 8 (Implementation and maintenance of landscaping)** provides that all landscaping works must be carried out in accordance with any detailed landscaping scheme approved under requirement 7 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards. Paragraph (2) requires that any tree or shrub planted or any seeded area as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season. This is to ensure that the landscaping is carried out and adequately maintained so as to provide the required visual mitigation in relation to the relevant parts of the Authorised Development. Paragraph (3) confirms that all landscaping provided in connection with Work No.2 and the optical regeneration stations in Work No.5 must be retained, managed and maintained during the operational period, ensuring adequate visual screening is provided for the life of the Authorised Development as necessary.

- 12.6.10 **Requirement 9 (Biodiversity management plan)** provides that the onshore site preparation works or a phase of Works No. 2, Works No.4 or Works No. 5 may not commence until a written biodiversity management plan in relation to that phase (which accords with the outline landscaping and biodiversity strategy and the relevant recommendations of appropriate British Standards) has been submitted to and approved by the relevant local planning authority in consultation with the relevant statutory nature conservation bodies and (where works have the potential to have an impact on wetland habitats) the Environment Agency. Any approved written biodiversity management plan must include the information set out in paragraph (4), including an implementation timetable and must be carried out as approved. This requirement is included to ensure the appropriate measures described in the environmental statement relation to biodiversity in connection with the Authorised Development are carried out.
- 12.6.11 **Requirement 10 (Highway accesses)** provides that the construction of any permanent or temporary means of access or use of an existing access, shall not be commenced until the undertaker has obtained the written approval of the of the siting, design, layout, visibility splays, access management measures and a maintenance programme for any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, relevant to that phase, from the relevant highway authority (in consultation with the relevant planning authority). The highway accesses (including visibility splays) where constructed must be constructed and maintained in accordance with the approved details.
- 12.6.12 **Requirement 11 (Construction fencing and other means of enclosure)** requires the undertaker to ensure that all construction sites remain securely fenced at all times during the construction of the Authorised Development landwards of MHWS. Further, it requires any temporary fencing is removed on completion of the construction of the phase of the authorised development landwards of MHWS it was erected in connection with.
- 12.6.13 **Requirement 12 (Surface and foul water drainage)** requires the undertaker to obtain the written approval of the relevant planning authority in consultation with the lead local flood authority (in relation to surface water drainage) and the sewerage and drainage authority (in relation to foul water drainage)(including means of pollution control) for each phase of the Authorised Development prior to that phase commencing. The surface and foul water drainage system for each phase must be constructed and maintained in accordance with the approved details.
- 12.6.14 **Requirement 13 (Contaminated land and groundwater)** provides that no phase of the Authorised Development landwards of MHWS may be commenced until a written scheme applicable to that phase in accordance with the onshore outline construction environmental management plan and surface water drainage and aquifer contamination mitigation strategy (in so far as relevant), to deal with the contamination of any land, including groundwater which is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to and approved by the relevant planning authority in consultation with the

Environment Agency and, to the extent it relates to the intertidal area, the MMO.

- 12.6.15 A scheme to be submitted to discharge this requirement must include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site. The requirement also provides for the submission of a verification report demonstrating completion of the works set out in the approved scheme and the effectiveness of the remediation to the relevant planning authority, and that a long-term monitoring and maintenance plan shall be implemented as approved.
- 12.6.16 **Requirement 14 (Archaeology)** provides that no phase of the authorised development landwards of MHWS shall commence until a written scheme for the investigation of areas of archaeological interest has been submitted to and approved by the relevant planning authority. The term commence for the purpose of this requirement includes the onshore site preparation works. Any scheme shall identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.
- 12.6.17 **Requirement 15 (Construction environment management plan)** provides that no phase of the authorised development landwards of MHWS including the onshore site preparation works shall commence until a construction environmental management plan relating to that phase has been submitted to and approved by the relevant planning authority. Any construction environment management plan must be in substantially in accordance with the onshore outline construction environment management plan submitted as part of the Application and contain other pertinent plans and information expressly stated to be required. The construction of any phase of the authorised development landwards of MHWS must be carried out in accordance with the construction environmental management plan approved in relation to it.
- 12.6.18 **Requirement 16 (External construction lighting)** provides that no phase of Works No. 2, shall commence until written details of any external lighting to be installed at any of the construction sites within that phase or in relation to that phase in accordance with the onshore outline construction environmental management plan (in so far as relevant) have been submitted to and approved by the relevant local planning authority after consultation with the South Downs National Park Authority. Any approved means of lighting must subsequently be installed and retained for the duration of the construction period.
- 12.6.19 **Requirement 17 (Construction traffic management plan)** requires a construction traffic management plan to be submitted to and approved by the relevant highway authority which shall be required to be in accordance with the construction traffic management plan (as defined and submitted as part of the Application). The construction of any phase of the Authorised Development landwards of MHWS must be carried out in

accordance with the construction traffic management plan approved in relation to it.

- 12.6.20 **Requirement 18 (Construction hours)** details the hours within which works of construction of the Authorised Development are to be carried out. The requirement is imposed to avoid adverse impacts on the amenity of surrounding receptors as a consequence of carrying out the construction of the Authorised Development. For this reason, start up and shut down activities may happen up to an hour either side of the core working hours or the receipt of oversize deliveries to the site, the arrival and departure of personnel to and from the site, on-site meetings or briefings, and the use of welfare facilities and non-intrusive activities. Certain operations stated in the outline construction environmental management plan may be carried out outside of the core working hours may be carried out outside of the core working hours.
- 12.6.21 **Requirement 19 (Converter station operational access strategy)** requires an access strategy for the access and egress of vehicles associated with the operation and maintenance of the converter station to be submitted and approved before the operation of the converter station.
- 12.6.22 **Requirement 20 (Control of noise during the operational period)** provides that prior to the use of that relevant part of the authorised development landwards of MHWS, a noise management plan in relation to Works No.2 and the optical regeneration stations must be submitted to and approved by the relevant planning authority. The noise management plan must set out required particulars and be implemented as approved and maintained for the duration of the use of those parts of the authorised development, which are to accord with the broadband and octave band noise criteria detailed within the operational broadband and octave band noise criteria document.
- 12.6.23 **Requirement 21 (Travel plan)** provides that no phase of the authorised development shall be begun until, after consultation with the relevant planning authority and the relevant highway authority, a travel plan for the contractor's workforce in accordance with the framework construction worker travel plan (in so far as relevant), which must include details of the expected means of travel to and from Works No. 2 (including in connection with Works No.4) and Works No.5 and any parking to be provided, has been submitted to and approved by the relevant planning authority.
- 12.6.24 **Requirement 22 (Restoration of land used temporarily for construction)** requires that any land within the Order limits landwards of MLWS which is used temporarily for construction must be reinstated to its former condition, or such condition as the relevant local planning authority may approve but which may not be to a standard which is higher than its former condition, within twelve months of the completion of the authorised development.
- 12.6.25 **Requirement 23 (Control of lighting during operational period)** provides that there will be no external lighting of Works No.2 or the optical regeneration stations within Works No. 5 during the hours of darkness during the operational period save for in exceptional circumstances, including in the case of emergency and where urgent maintenance is required.

- 12.6.26 **Requirement 24 (Decommissioning)** requires that where, at some future date, the Authorised Development landwards of MHWS, or any part of it, is to be decommissioned, a written scheme of decommissioning must be submitted for approval by the relevant planning authority, and that any approved written scheme of decommissioning must be implemented, unless otherwise approved by the relevant planning authority. It is relevant in this regard to note that consent is not sought for decommissioning, and that this Requirement therefore requires appropriate consents to be sought in the future once the period of operation has ceased.
- 12.6.27 **Requirement 25 (Traffic management strategy)** requires the submission and approval of a traffic management strategy in relation to any phase of Work No.4 which is to be undertaken on the highway. The required content of a traffic management strategy is explicitly stated and ensures an adequate level of detail is provided. The production of the traffic management strategies is one of three key stages of approval for the works in the highway, the others being the need to obtain a detailed design approval in accordance with Requirement 6(3) and the need to obtain a permit before such works are undertaken in accordance with Article 9A. Together, this ensures the works undertaken in the highway are approved and controlled so as to minimise impacts, and that the position regarding the reinstatement required to be undertaken is confirmed in advance.
- 12.6.28 **Requirement 26 (Requirement for written approval)** provides that where the approval or agreement of the relevant planning authority or another person is required in connection with any requirement, that approval or agreement must be given in writing.
- 12.6.29 **Requirement 27 (Amendments to approved details)** provides that where required the approved details must be carried out in accordance with the details so approved, unless an amendment or variation is previously agreed in writing by the relevant planning authority or the relevant highway authority (as appropriate), and such amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement.
- 12.6.30 Agreement to an amendment or variation may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority or the relevant highway authority that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Schedule 3 – Procedure for approvals, consents and appeals

- 12.7 Schedule 3 sets out the process to be followed in relation to applications made to the discharging authority for any agreement or approval required by a requirement of the Order.

Schedule 4 – Land plans

- 12.8 Schedule 4 contains a schedule of the certified land plans.

Schedule 5 – Works plans

- 12.9 Schedule 5 contains a schedule of the certified works plans.

Schedule 6 – Access and rights of way plans

12.10 Schedule 6 contains a schedule of the certified rights of way plans.

Schedule 7 – Parameter plans

12.11 Schedule 7 contains a schedule of the certified parameter plans

Schedule 8 – Streets and public rights of way to be stopped up

12.12 Schedule 8 sets out the streets and public rights of way to be temporarily stopped up. It references the street or public right of way and the extent of it which may be stopped up.

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

12.13 Schedule 9 modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. This has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016.

Schedule 10 – Land of which only temporary possession may be taken

12.14 Schedule 10 sets out the land of which only temporary possession may be taken, pursuant to article 30.

Schedule 11 – Trees subject to tree preservation orders

12.15 Schedule 11 sets out the trees subject to a tree preservation order which works are to be carried out to. It references the type of tree, the works to be carried out and the location of the tree.

Schedule 12 – Removal of important hedgerows

12.16 Schedule 12 sets out the important hedgerows that may be removed pursuant to article 41.

Schedule 13 – Protective provisions

12.17 Schedule 13 sets out protective provisions for the benefit of statutory Undertakers whose equipment may be affected by the Authorised Development. The protective provisions included in the draft Order are in the main placeholder text.

12.18 The Undertaker has engaged with relevant statutory undertakers in relation to all protective provisions proposed to be included in the Order and will continue to do so following submission of the Application, with a view to agreeing protective provisions for inclusion in the order.

12.19

Schedule 14 – Certified documents

12.20 Schedule 14 sets out the documents which are certified documents pursuant to article 43.

Schedule 15 – Deemed marine licence under the 2009 Act

12.21 Schedule 15 sets out the marine licence referred to in article 37, which would be deemed to be granted for works comprised in the Authorised Development. The Undertaker has engaged with the Marine Management Organisation and other relevant stakeholders regarding the deemed marine licence. In addition, whilst there is no model provisions for a deemed marine licence, a standard structure has been used based on previous granted DCOs containing deemed marine licences.

Part 1 – Licensed Activities

- 12.22 Paragraph 1 (Interpretation) – provides the definition and interpretation of key terms used in the licence. Many of the terms included in this paragraph are identical to the terms in Article 2 of the Order.
- 12.23 Paragraphs 2 to 5 (Details of licenced marine activities) - provides details of the licensable marine activities both in terms of construction as well as operation. It replicates the description of the Authorised Development in Schedule 1 of the Order and it also describes the substances that may be disposed of as part of construction of the Authorised Development
- 12.24 Paragraph 6 sets out the grid co-ordinates for the Authorised Development comprising Works No.6 and 7.
- 12.25 Paragraph 7 confirms licence remains in force until the authorised development has been decommissioned in accordance with a programme to be approved by the MMO and the completion of such programme has been confirmed by the MMO in writing.
- 12.26 Paragraph 8 confirms that the provisions of section 72(7) of the 2009 Act do not apply to any transfer of the deemed marine licence falling within Article 7 of the Order. This is necessary to ensure that there is no conflict or unnecessary duplication of process between the operation of Article 7 of the Order and Section 72(7) of the 2009 Act.
- 12.27 Paragraph 9 confirms that where any licenced activity is to be undertaken in accordance with a plan, protocol or statement approved under the licence, the plans, protocols or statements so approved are taken to include amendments that may be approved in writing by the MMO subsequent to the first approval of those plans, protocols or statements.
- 12.28 Paragraph 10 confirms that any amendments made to any approved details must demonstrate that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Part 2 – Conditions

- 12.29 Condition 1 (*Design parameters*) sets out the design parameters for the relevant Work No. 7.
- 12.30 Condition 2 (*Notifications and inspections*) provides for a procedure of supplying copies of the licence to agents, contractors, restricting the use of contractors and vessels notified to the MMO and publicising commencement of the licenced activities.
- 12.31 Condition 3 (*Pre-construction surveys*) provides requirements in relation to surveys to be undertaken pre-construction of the Authorised Development. The pre-construction surveys will include a swath-bathymetry survey within the Order limits seaward of MHWS to inform future navigation risk assessments as part of the cable specification and installation plan and determine the location, extent and composition of any biogenic and geogenic reef habitat within the Order limits seaward of MHWS identified in the environmental statement. The undertaker must carry out the pre-construction surveys and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed with the MMO (in consultation with the relevant statutory nature conservation bodies).

- 12.32 Condition 4 and 5 (*Pre-construction plans and documentation*) provides a requirement for the Undertaker to obtain the approval, before the commencement of licenced activities, of a range of documentation. The documentation includes:
- 12.32.1 a design plan (sub-paragraph 1(a));
 - 12.32.2 a construction programme (sub-paragraph 1(b));
 - 12.32.3 a cable burial and installation plan (sub-paragraph 1(c));
 - 12.32.4 an environmental management plan (sub-paragraph (d)); and
 - 12.32.5 a written scheme of archaeological investigation (paragraph (2)).
- 12.33 Condition 5 sets out the process for the approval of plans and documents pursuant to condition 4, including the ability to appeal a potential refusal in accordance with the procedure provided for at Part 3 of the licence.
- 12.34 Condition 6 (*Reporting of engaged agents, contractors and vessels*) requires the Undertaker to provide the MMO details of any change of agents and contractors engaged in licenced activities.
- 12.35 Condition 7 (*Aid to Navigation*) provides for various matters in respect of aids to navigation including the requirement to maintain navigation aids.
- 12.36 Condition 8 (*Chemicals, drilling and debris*) sets standards that must be met by the Undertaker in respect of the chemicals and other substances that can be used and how they can be stored, transported and where they can be disposed of. In addition, there is a procedure to be followed in the event of dropped objects.
- 12.37 Condition 9 (*Force majeure*) provides an allowance for deposits outside of the Order limits seaward of MHWS or the disposal of dredged material within the Order limits seaward of MHWS but outside of disposal site during an emergency situation, for the notification of such unauthorised deposit/disposal to the MMO, and a requirement for the Undertaker, at its own cost, to recover that deposit unless written approval is obtained from the MMO.
- 12.38 Condition 10 (*Post-construction surveys*) provides requirements in relation to the carrying out of a swath-bathymetry survey to be undertaken within 6 months following the completion of the construction of the Authorised Development in order to inform of any dropped objects or residual navigational risk and determine any change in the location, extent and composition of any biogenic or geogenic reef feature identified in the pre-construction survey in the parts of the Order limits seaward of MHWS in which construction works were carried out.
- 12.39 In addition, paragraph (2) requires the undertaker to produce an electromagnetic deviation survey where requested by the MMO, and paragraph (3) requires the Undertaker to submit International Hydrographic Office (IHO Order 1A) approved Multi Beam Echo Sounder survey data to the MMO, the MCA, Trinity House and UK Hydrographic Office, confirming the final clearance depths over the marine HVDC cables and the associated cable protection.
- 12.40 Condition 11 (*Cable burial management plan*) requires a cable burial management plan to be submitted following the completion of the construction of the Authorised Development.
- 12.41 Condition 12 (*Maintenance of the authorised development*) provides that the Undertaker may at any time maintain the authorised development, except to the extent that this licence or an agreement made under this licence provides otherwise. Specific provisions are included regulating the extent to which cable protection may be laid following the completion of construction, limiting the period

over which this may be carried out to 15 years in accordance with the approach agreed with the MMO and Natural England.

- 12.42 Condition 13 (*Post-construction approvals*) provides the process for the determination of applications for approvals under conditions 10 and 11 of the licence, including the ability to appeal a potential refusal in accordance with the procedure provided for at Part 3 of the licence.

Part 3 – Procedure for appeals

- 12.43 Part 3 provides a procedure for the appeal of refusals for approval or non-determination of applications relation to conditions 3, 4, 10, 11 and 12 of the licence, which accords with the appeals procedure provided for by the Marine Licensing (Licence Application Appeals) Regulations 2011, subject to amendments necessary to make this applicable to the Order and ensure the timely determination of appeals so as to facilitate the timely delivery and maintenance of the Authorised Development. This approach has been adopted as an option within the draft Hornsea Project Three Offshore Windfarm Order and the draft Norfolk Vanguard Offshore Windfarm Order.

