

Outer Dowsing Offshore Wind Phase 2 Consultation Draft Development Consent Order

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INFRASTRUCTURE PLANNING

<i>Made</i>	-	-	-	-	***
<i>Coming into force</i>					***

PART 1

Preliminary

- ## PART 2
- ### Principal Powers

- ## PART 3
- ### Streets

9. Street works
10. Application of the 1991 Act
11. Public rights of way
12. Temporary stopping up of public rights of way
13. Temporary stopping up of streets
14. Access to works
15. Agreements with street authorities
16. Highway alterations
17. Power to alter layout etc. of streets
18. Traffic Regulation

PART 4
Supplemental powers

- 19. Discharge of water
- 20. Authority to survey and investigate the land onshore
- 21. Removal of Human Remains

PART 5
Powers of Acquisition

- 22. Compulsory acquisition of land
- 23. Time limit for exercise of authority to acquire land compulsorily
- 24. Compulsory acquisition of rights
- 25. Private rights
- 26. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
- 27. Modification of Part 1 of the Compulsory Purchase Act 1965
- 28. Acquisition of subsoil or airspace only
- 29. Rights under or over streets
- 30. Temporary use of land for carrying out the authorised project
- 31. Temporary use of land for maintaining authorised project
- 32. Statutory undertakers
- 33. Recovery of costs of new connections

PART 6
Operations

- 34. Deemed marine licences under the 2009 Act

PART 7
Miscellaneous and general

- 35. Application of landlord and tenant law
- 36. Operational land for purposes of the 1990 Act
- 37. Felling or lopping of trees and removal of hedgerows
- 38. Trees subject to tree preservation orders
- 39. Protective provisions
- 40. Arbitration
- 41. Requirements, appeals, etc.
- 42. Certification of plans etc.
- 43. Abatement of works abandoned or decayed
- 44. Saving provisions for Trinity House
- 45. Crown rights
- 46. Funding
- 47. Compensation provisions
- 48. Service of notices

SCHEDULE 1 — Authorised project

- PART 1 — Authorised development
- PART 2 — Ancillary Works
- PART 3 — Requirements
- SCHEDULE 2 — Streets subject to street works
- SCHEDULE 3 — Footpaths to be stopped up
- SCHEDULE 4 — Public rights of way to be temporarily stopped up
- SCHEDULE 5 — Streets to be temporarily stopped up
- SCHEDULE 6 — Access to works
- SCHEDULE 7 — Traffic regulation
- SCHEDULE 8 — Land in which only new rights etc. may be acquired
- SCHEDULE 9 — Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions
- SCHEDULE 10 — Land of which temporary possession may be taken
- SCHEDULE 11 — Deemed marine licence under the 2009 Act - generation assets
 - PART 1 — Licensed Marine Activities
 - PART 2 — Conditions
- SCHEDULE 12 — Deemed licence under the 2009 Act – offshore transmission assets
 - PART 1 — Licensed marine activities
 - PART 2 — Conditions
- SCHEDULE 13 — Deemed licence under the 2009 Act – artificial nesting structure(s)
- SCHEDULE 14 — Removal of important hedgerows
- SCHEDULE 15 — Trees subject to tree preservation orders
- SCHEDULE 16 — Protective Provisions
 - PART 1 — Protection for electricity, gas, water and sewerage undertakers
 - PART 2 — Protection for operators of electronic communications code networks
 - PART 3 — Protection for Anglian Water Services Limited
 - PART 4 — Protection for National Grid as electricity and gas undertaker
 - PART 5 — Protection for the Environment Agency and drainage authorities
- SCHEDULE 17 — Arbitration Rules
- SCHEDULE 18 — Procedure for discharge of requirements
- SCHEDULE 19 — Documents to be certified
 - PART 1 — Documents forming the environmental statement to be certified
 - PART 2 — Other Documents to be certified
- SCHEDULE 20 — Compensation provisions
 - PART 1 — Flamborough and Filey Coast Special Protection Area: Kittiwake Compensation Measures
 - PART 2 — Flamborough and Filey Coast Special Protection Area: Guillemot and Razorbill Compensation Measures
 - PART 3 — Flamborough and Filey Coast Special Protection Area: Gannet Compensation Measures
 - PART 4 — Inner Dowsing, Race Bank, and North Ridge Special Area of Conservation: Benthic Compensation Measures

An application under section 37 of the Planning Act 2008 (“the 2008 Act”)(a) has been made to the Secretary of State for an order granting development consent.

The application was examined by the Examining Authority, which has made a report to the Secretary of State under section 74(2) of the 2008 Act.

The Examining Authority, having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74 of the 2008 Act made a report and recommendation to the Secretary of State.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(b) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State is satisfied that special category land comprised within the Order land, when burdened with the new rights authorised for compulsory acquisition under the terms of this Order, will be no less advantageous than it was before to the persons in whom it is vested; other persons, if any, entitled to rights of common or other rights; and the public; and that, accordingly, section 132(3) of the 2008 Act applies.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State, in exercise of the powers conferred by sections 114 and 120 of the 2008 Act, makes the following Order:

PART 1

Preliminary

Citation and commencement

- 1.—(1) This Order may be cited as the Outer Dowsing Offshore Wind Farm Order 202*.
(2) This Order comes into force on [] 202*.

Interpretation

- 2.—(1) In this Order—
“the 1961 Act” means the Land Compensation Act 1961(c);
“the 1965 Act” means the Compulsory Purchase Act 1965(d);
“the 1980 Act” means the Highways Act 1980(e);
“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(f);

(a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of, and schedule 13 to, the Localism Act 2011 (c.20) and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c. 27).

(b) S.I. 2017/572.

(c) 1961 c.33.

(d) 1965 c.56.

(e) 1980 c.66.

(f) 1981 c.66.

“the 1989 Act” means the Electricity Act 1989(a);

“the 1990 Act” means the Town and Country Planning Act 1990(b);

“the 1991 Act” means the New Roads and Street Works Act 1991(c);

“the 2003 Act” means the Communications Act 2003(d);

“the 2004 Act” means the Energy Act 2004(e);

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009(f);

“the 2016 Regulations” means the Environmental Permitting (England and Wales) Regulations 2016(g);

“the 2017 Regulations” means the Conservation of Habitats and Species Regulations 2017(h);

“access to works plan” means the plan or plans certified as the access to works plan or plans by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“ancillary works” means—

- (a) the ancillary works described in Part 2 of Schedule 1 (ancillary works); and
- (b) any other works authorised by this Order,

to the extent that such works are not development within the meaning of section 32 of the 2008 Act;

“array cable” means the cables described in paragraph (b) of Work No. 1 that link the wind turbine generators to each other and to the offshore transformer substations;

“authorised development” means the development described in Part 1 of Schedule 1 (authorised development) and any other development authorised by this Order that is development within the meaning of section 32 of the 2008 Act;

“authorised project” means the authorised development and the ancillary works;

“book of reference” means the book of reference certified by the Secretary of State under article 42 (certification of plans etc.) as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“buoy” means any floating device used for navigational purposes or measurement purposes, including LiDAR buoys, wave buoys and guard buoys;

“cable circuits” means a number of electrical conductors necessary to transmit electricity between two points within the authorised development bundled as one cable or taking the form of separate cables, and may include one or more auxiliary cables (normally fibre optic cables) for the purpose of control, monitoring, protection or general communications;

“cable crossings” means the crossing of existing sub-sea cables or pipelines or other existing infrastructure by cable circuits authorised by this Order together with physical protection measures including cable protection;

“cable protection” means measures to protect cables from physical damage including the use of bagged solutions filled with grout or other materials, protective aprons or coverings, mattresses, flow energy dissipation devices or rock and gravel burial;

“carriageway” has the same meaning as in the 1980 Act(i);

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- (a) 1989 c.29.
 - (b) 1990 c.8.
 - (c) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 78(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
 - (d) 2003 c.21.
 - (e) 2004 c.20. Section 105 was amended by section 69 of the Energy Act 2008 (c.32) .
 - (f) 2009 c.23.
 - (g) S.I. 2016/1154.
 - (h) S.I. 2017/1012.
 - (i) “carriageway” is defined in section 329(1).

“commence” means—

- (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for operations consisting of offshore preparation works or pre-construction monitoring surveys approved under the deemed marine licences; and
- (b) in respect of any other works comprised in the authorised project, the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than onshore preparation works;

and the words “commencement” and “commenced” must be construed accordingly;

“deemed marine licences” means the marine licences set out in Schedules 11 (deemed licence under the 2009 Act – generation assets), 12 (deemed licence under the 2009 Act – offshore transmission assets) and 13 (deemed licence under the 2009 Act – artificial nesting structure(s));

“earth pit” means the underground plastic and/or concrete pit where the earthing points between adjacent export cable sections are connected and earthed installed within a buried chamber for intermittent maintenance and fault-finding purposes.

“EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017;

“export cables” means the offshore and onshore cable circuits comprised within Work Nos. 5, 11 and 13 connecting the offshore transformer stations to the onshore HVAC substation;

“cable ducts” means conduits for the installation of cable circuits;

“environmental statement” means the document certified as the environmental statement by the Secretary of State under article 42 (certification of plans etc.);

“fibre optic cable” means a cable consisting of one or more thin flexible fibres with a glass core through which signals are sent in the form of light;

“gravity base structure” means a structure principally of steel, concrete, or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or additional skirts and associated equipment including scour protection, J-tubes, corrosion protection systems and access platforms and equipment;

“highway” and “highway authority” have the same meaning as in the 1980 Act^(a);

“Historic England” means the Historic Buildings and Monuments Commission for England;

“horizontal directional drilling” is a trenchless technique for installing cables and cable ducts involving drilling in an arc between two points;

“HVAC” means high voltage alternating current;

“important hedgerows and tree preservation order plan” means the document certified as the important hedgerows and tree preservation order plan by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“in principle monitoring plan” means the document certified as the in principle monitoring plan by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“in principle Southern North Sea SAC Site Integrity Plan” means the document certified as the in principle Southern North Sea SAC Site Integrity Plan by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“interlink cable” means the cables comprised within Work No. 4 that link the offshore transformer substations to each other and to the offshore accommodation platform;

“intertidal area” means the area between MHWS and MLWS;

(a) “highway” is defined in section 328(1), for “highway authority”, see section 1.

“intrusive” means an activity that requires or is facilitated by breaking the surface of the ground or seabed (but does not include the installation of fence or signage posts);

“jointing bay” means an excavation formed with a buried concrete slab at sufficient depth to enable the jointing of high voltage power cables;

“jointing” means a process by which two or more cables are connected to each other by means of cable joints within a jointing bay;

“landfall” means the location at which the offshore export cables and fibre optic cables come ashore;

“landfall logistics compound” means a logistics compound associated with the works at the landfall including the construction of transition joint bays and trenchless technique works;

“land plans” means the plans certified as the land plans (onshore) and land plans (offshore) by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.)

“large offshore transformer substation” means the large version of the offshore transformer substations assessed in the environmental statement;

“logistics compound” means a construction site associated with the onshore transmission works including hard standings, lay down and storage areas for construction materials, plant and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, wheel washing facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“LAT” means lowest astronomical tide;

“layout principles statement” means the document certified as the layout principles statement by the Secretary of State for the purposes of the Order under article 42;

“lead local flood authority” has the meaning in section 6(7) of the Flood and Water Management Act 2010(a);

“limits of deviation” means the limits for the scheduled works as shown on the works plans;

“link box” means the underground metal box placed within a plastic and/or concrete pit where the metal sheaths between adjacent export cable sections are connected and earthed. Link boxes are installed within a ground level manhole or inspection chamber to allow access for regular maintenance and fault-finding purposes. They may include above ground demarcation which may include fencing and marker posts;

“local highway authority” has the same meaning as in section 329(1) of the 1980 Act(b);

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace (including replenishment of cable protection), but does not include the removal, reconstruction or replacement of foundations associated with the offshore works, to the extent assessed in the environmental statement; and any derivative of maintain must be construed accordingly;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“mean low water springs” or “MLWS” means the average height of all low waters above Chart Datum;

“MMO” means the Marine Management Organisation;

“monopile foundation” means a steel pile, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platforms and equipment;

“MSL” means mean sea level;

(a) 2010 c.29.

(b) Section 329(1) was amended by Schedule 1(1) para. 60(2)(a) to the Infrastructure Act 2015 c.7.

“offshore accommodation platform” means a structure attached to the seabed by means of a foundation, with one or more decks and a helicopter platform (including bird deterrents), containing housing accommodation, storage, workshop, auxiliary equipment, and facilities for operating, maintaining and controlling the wind turbine generators and offshore electrical installations;

“offshore electrical installations” means the small offshore transformer substations, the large offshore transformer substations, and the offshore reactive compensation platforms forming part of the authorised development;

“offshore preparation works” means surveys and monitoring seaward of MHWS undertaken prior to the commencement of construction to prepare for construction;

“offshore reactive compensation platform” means a structure attached to the seabed by means of a foundation, with one or more decks and a helicopter platform (including bird deterrents) housing electrical reactors and switchgear for the purpose of the efficient transfer of power in the course of HVAC transmission by providing reactive compensation;

“offshore transformer substation” means a structure attached to the seabed by means of a foundation, with one or more decks and a helicopter platform (including bird deterrents), containing—

- (a) electrical equipment required to switch, transform, convert electricity generated at the wind turbine generators to a higher voltage and provide reactive power compensation; and
- (b) housing accommodation, storage, workshop auxiliary equipment, radar and facilities for operating, maintaining and controlling the substation or wind turbine generators;

“offshore works” means Work Nos. 1 to 11 and any related associated development in connection with those works and ancillary works described in Schedule 1 part 1 and Schedule 1 part 2 respectively;

“onshore preparation works” means operations consisting of site clearance, pre-planting of landscaping works, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, creation of site accesses and the temporary display of site notices or advertisements;

“onshore HVAC substation” means a compound containing electrical equipment (including power transformers, gantries, switchgear, reactive compensation equipment, electrical protection equipment devices (disconnectors, circuit breakers), harmonic filters, cables and back-up generators), control buildings, lightning protection masts, communications masts, access, fencing and other associated equipment, structures or buildings;

“onshore substation design principles statement” means the document certified as the onshore substation design principles statement by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“onshore transmission works” means Work Nos. 11 to 20 and any related associated development in connection with those works and ancillary works described in Schedule 1 part 1 and Schedule 1 part 2 respectively;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference;

“Order limits” means the limits shown on the works plans within which the authorised project may be carried out;

“Order limits boundary coordinates plan (offshore)” means the document certified as the Order limits boundary coordinates plan (offshore) by the Secretary of State under article 42 (certification of plans etc.);

“outline air quality management plan” means the document certified as the outline air quality management plan by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“outline cable specification and installation plan” means the document certified as the outline cable specification and installation plan by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“outline construction traffic management plan” means the document certified as the outline construction traffic management plan by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“outline flood risk assessment” means the document certified as the outline flood risk assessment by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“outline landscape and ecological management strategy” means the document certified as the outline landscape and ecological management strategy by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“outline marine mammal mitigation protocol” means the document certified as the outline marine mammal mitigation protocol by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“outline operational drainage management plan” means the document certified as the outline operational drainage management plan by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“outline public access management plan” means the document certified as the outline public access management plan by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“outline travel plan” means the document certified as the outline travel plan by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“outline written scheme of investigation (offshore archaeology)” means the document certified as the outline written scheme of investigation (offshore archaeology) by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“outline written scheme of investigation (onshore archaeology)” means the document certified as the outline written scheme of investigation (onshore archaeology) by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“permanent stopping up of public rights of way plan” means the plan certified as the permanent stopping up of public rights of way plan by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“pin piles” means steel cylindrical piles driven and/or drilled into the seabed to secure steel jacket foundations;

“pin pile jacket foundation” means a jacket/lattice-type structure constructed of steel which is fixed to the seabed at three or more points with steel pin piles and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“relevant highway authority” means the highway authority for the area in which the land to which the relevant provision of this Order applies is situated;

(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

“relevant lead local flood authority” means the lead local flood authority for the area in which the land to which the relevant provision of this Order applies is situated;

“relevant local highway authority” means the local highway authority for the area in which the land to which the relevant provision of this Order applies is situated;

“relevant planning authority” means the district planning authority for the area in which the land to which the relevant provision of this Order applies is situated;

“requirements” means those matters set out in Part 3 of Schedule 1 (requirements) to this Order;

“SAC” means special area of conservation;

“scour protection” means measures to prevent loss of seabed sediment around a structure placed in or on the seabed by use of protective aprons, mattresses, or rock and gravel placement;

“scheduled works” means the numbered works specified in Part 1 of Schedule 1 (authorised development) to this Order, or any part of them;

“small offshore transformer substation” means the small version of the offshore transformer substations assessed in the environment statement;

“special category land” means the land comprising plot(s) [] shown on the land plans and described in the book of reference;

“stage” means a section or part of the authorised development as identified as a stage in a written scheme approved under requirement 7 (stages of authorised development onshore);

“statutory nature conservation body” means the appropriate nature conservation body as defined in regulation 5 of the 2017 Regulations;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and a public communications provider as defined in section 151 of the 2003 Act;

“street” means a street within the meaning of section 48 of the 1991 Act(a), together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act(b);

“suction bucket” means large diameter steel cylindrical shells which penetrate the seabed assisted by a hydrostatic pressure differential for securing steel jacket foundations;

“suction bucket jacket foundation” means a jacket/lattice-type structure constructed of steel which is fixed to the seabed at three or more points with steel suction buckets and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“temporary stopping up of public rights of way plan” means the plan certified as the temporary stopping up of public rights of way plan by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.);

“transition joint bay” means an underground pit where the offshore export cables are jointed to the onshore export cables;

“transition piece” means the metal structure attached to the top of the foundation where the base of the wind turbine generator is connected and may include additional equipment such as J-tubes, corrosion protection systems, boat access systems, access platforms, craneage, radar, electrical transmission equipment and associated equipment;

“trenchless technique” means a method of installation that allows ducts and cables to be installed under an obstruction without digging a trench (examples of such techniques include horizontal directional drilling, thrust boring, auger boring and pipe ramming);

(a) Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c.26).

(b) “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c.7).

“trenchless technique compound” means a construction site associated with the onshore transmission works where a trenchless technique is proposed including hard standings, lay down and storage areas for construction materials, plant and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, wheel washing facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means GT R4 Limited (company number 13281221);

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation; and

“works plans” means the plans certified as the works plans (onshore) and works plans (offshore) by the Secretary of State for the purposes of this Order under article 42 (certification of plans etc.).

(2) References in this Order to rights over land include references to rights to do or restrain or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over the land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or which is an interest otherwise comprised in the Order land.

(3) All distances, directions, capacities and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development shall be taken to be measured along that work.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(5) Unless otherwise stated, references in this Order to points identified by letters are to be construed as references to the points so lettered on the works plans.

(6) The expression “includes” is to be construed without limitation unless the contrary intention appears.

(7) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

PART 2

Principal Powers

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—

- (a) development consent for the authorised development; and
 - (b) consent for the ancillary works,
- to be carried out within the Order limits.

(2) Each of the scheduled works must be constructed and maintained within the limits of deviation for that work.

Power to maintain the authorised project

4.—(1) The undertaker may at any time maintain the authorised project, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain any further licence under Part 4 of the 2009 Act (marine licensing) for offshore works not covered by the deemed marine licences.

Operation of generating station

5.—(1) The undertaker is hereby authorised to operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

Benefit of the Order

6.—(1) Subject to this article, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Subject to paragraph (3), the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including the deemed marine licences) and such related statutory rights as may be agreed between the undertaker and the transferee;
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including the deemed marine licences) and such related statutory rights as may be so agreed,

except where paragraph (6) applies, in which case the consent of the Secretary of State is not required.

(3) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the benefit of any or all of the provisions of any of the deemed marine licences.

(4) Where an agreement has been made in accordance with paragraph (2) references in this Order to the undertaker, except in paragraph (5), (7), (8), (11) and (12) of this Article, include references to the transferee or lessee.

(5) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit, under paragraph (2)—

- (a) the benefit transferred or granted (“the transferred benefit”) shall include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit shall reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit shall not be enforceable against the undertaker; and
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) are subject to the same restrictions, liabilities and

obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(6) This paragraph applies where—

- (a) the transferee or lessee is a person who holds a licence under the 1989 Act; or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made,
 - (ii) any such claim has been made and has been compromised or withdrawn,
 - (iii) compensation has been paid in final settlement of any such claim,
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(7) The provisions of article 9 (street works), article 12 (temporary stopping up of streets), article 22 (compulsory acquisition of land), article 24 (compulsory acquisition of rights), article 30 (temporary use of land for carrying out the authorised project) and article 31 (temporary use of land for maintaining the authorised project) have effect only for the benefit of the named undertaker, and a person who is a transferee or lessee and is also—

- (a) in respect of Work Nos. 11 to 20 a person who holds a licence under the 1989 Act; or
- (b) in respect of functions under article 9 (street works) relating to a street, a street authority.

(8) Prior to any transfer or grant under this article taking effect the undertaker must provide written notification to the Secretary of State and, if such transfer or grant relates to the exercise of powers in their area, to the MMO and the relevant planning authority.

(9) A notice required under paragraph (8) must—

- (a) state—
 - (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
 - (ii) subject to paragraph (10), the date on which the transfer will take effect;
 - (iii) the provisions to be transferred or granted;
 - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (5), will apply to the person exercising the powers transferred or granted; and
 - (v) where paragraph (6) does not apply, confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land.
- (b) be accompanied by—
 - (i) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
 - (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

(10) The date specified under paragraph (9)(a)(ii) must not be earlier than the expiry of 14 days from the date of the receipt of the notice.

(11) The notice given under paragraph (9) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

(12) Section 72(7) and (8) of the 2009 Act do not apply to a transfer or grant of the whole or part of the benefit of the provisions of any of the deemed marine licences to another person by the undertaker pursuant to an agreement under this article 6 (benefit of the Order) save that the MMO may amend any deemed marine licence granted under Schedule 11, Schedule 12 or Schedule 13 of the Order to correct the name of the undertaker to the name of a transferee or lessee under this article 6 (benefit of the Order).

Application and modification of legislative provisions

7.—(1) Regulation 6 of the Hedgerows Regulations 1997^(a) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j)—

“(k) for carrying out development that has been authorised by an order granting development consent pursuant to the Planning Act 2008.”

(2) The following provisions do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project—

- (a) the provisions of the Neighbourhood Planning Act 2017^(b) insofar as they relate to temporary possession of land under articles 30 (temporary use of land for carrying out the authorised project) and 31 (temporary use of land for maintaining the authorised project) of this Order;
- (b) the 2016 Regulations, to the extent that they require a permit for anything that would have required consent made under section 109 of the Water Resources Act 1991^(c) immediately before the repeal of that section or for any activities defined under the 2016 Regulations as flood risk activities;
- (c) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991 that require consent or approval for the carrying out of works;
- (d) section 23 of the Land Drainage Act 1991^(d) (prohibition of obstructions etc. in watercourses); and
- (e) the provisions of any byelaws made under section 66 of the Land Drainage Act 1991 (powers to make byelaws) that require consent or approval for the carrying out of works.

(3) Nothing in this article 7 (application and modification of legislative provisions) overrides the requirement for an environmental permit under Regulation 12(1)(b) (requirement for environmental permit) of the 2016 Regulations.

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990^(e) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site) or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974^(f); or

(a) S.I. 1997/1160.

(b) 2017 c.20.

(c) 1991 c57.

(d) 1991 c59.

(e) Section 82 was amended by section 107 and paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25), section 5 of the Noise and Statutory Nuisance Act 1993 (c. 40), and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and section 79 was amended by sections 101 and 102 of the Clean Neighbourhoods and Environment Act 2005 (c. 16), and by section 120 and paragraph 89 of Schedule 22 to the Environment Act 2005. There are other amendments to this Act which are not relevant to the Order.

(f) Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 (c. 43) and Schedule 24 to the Environment Act 1995 (c. 25). There are other amendments to the 1974 Act which are not relevant to the Order.

- (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in compliance with requirement [] (control of noise during operational phase); or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction, maintenance or decommissioning of the authorised project.

PART 3

Streets

Street works

9.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel within or under it;
- (b) tunnel or bore under the street;
- (c) remove or use all earth and materials in or under the street;
- (d) place and keep apparatus under the street;
- (e) maintain apparatus under the street or change its position; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c), (d) and (e).

(2) The authority given by paragraph (1) 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 1991 Act.

(3) In this article “apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act^(a).

Application of the 1991 Act

10.—(1) The provisions of the 1991 Act mentioned in paragraph (2) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

- (a) the carrying out of works under article 9 (street works); and
- (b) the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under article 13 (temporary stopping up of streets)

whether or not the carrying out of the works or the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act^(b) are—

- (a) subject to paragraph (3), section 55 (notice of starting date of works);

(a) “apparatus” is defined in section 89(3) and section 105(1).

(b) Sections 55, 57, 60, 68 and 69 were amended by the Traffic Management Act 2004 (c. 18).

- (b) section 57 (notice of emergency works);
- (c) section 60 (general duty of undertakers to co-operate);
- (d) section 68 (facilities to be afforded to street authority);
- (e) section 69 (works likely to affect other apparatus in the street);
- (f) section 76 (liability for cost of temporary traffic regulation);
- (g) section 77 (liability for cost of use of alternative route); and
- (h) all provisions of that Act that apply for the purposes of the provisions referred to in subparagraphs (a) to (g).

(3) Section 55 of the 1991 Act as applied by paragraph (2) has effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Public rights of way

11.—(1) The undertaker may, in connection with the carrying out of the authorised project—

- (a) permanently stop up each of the public rights of way specified in column (2) of Schedule 3 (footpaths to be stopped up) to the extent specified in column (3) of Schedule 3, by reference to the letters shown on the permanent stopping up of public rights of way plan; and
- (b) provide the alternative public rights of way described in column (4) of Schedule 3 (footpaths to be stopped up) or as otherwise approved by the relevant local highway authority.

(2) With effect from the date of certification by the local highway authority that the relevant alternative right of way has been created to the standard defined in the outline public access management plan, the section of the public right of way (being a footpath) specified in columns (1), (2) and (3) of Schedule 3 (footpaths to be stopped up) is extinguished.

(3) With effect from that same date, the alternative section of the footpath specified in column (4) of Schedule 3 (footpaths to be stopped up) or as otherwise approved by the relevant local highway authority is created.

(4) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act^(a).

Temporary stopping up of public rights of way

12. The undertaker may, in connection with the carrying out of the authorised project, temporarily stop up each of the public rights of way specified in column (2) of Schedule 4 (public rights of way to be temporarily stopped up) to the extent specified in column (3) of Schedule 4, by reference to the letters shown on the temporary stopping up of public rights of way plan.

Temporary stopping up of streets

13.—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limiting paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article within the Order limits as a temporary working site.

(a) Part 1 was amended by s.192(1) of the Housing and Planning Act 2016 (c. 22) and Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, S.I. 2009/1307.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limiting paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in column (2) of Schedule 5 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Schedule.

(5) The undertaker must not temporarily stop up, alter, divert or use as a temporary working site—

- (a) any street referred to in paragraph (4) without first consulting the street authority;
- (b) any street referred to in Schedule 4 (public rights of way to be temporarily stopped up) without first consulting the local highway authority; and
- (c) any other street without the consent of the street authority, which may attach reasonable conditions to the consent.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(c) that street authority is deemed to have granted consent.

Access to works

14.—(1) The undertaker may, for the purposes of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 6 (access to works); and
- (b) with the approval of the relevant highway authority after consultation with the relevant planning authority in accordance with Requirement 11 (highway accesses), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

(2) If the relevant highway authority fails to notify the undertaker of its decision within 28 days of receiving an application for approval under paragraph (1)(b) that relevant highway authority is deemed to have granted approval.

Agreements with street authorities

15.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) any temporary stopping up, alteration or diversion of a street authorised by this Order;
- (b) the construction of any new street authorised by this Order; or
- (c) the carrying out in the street of any of the works referred to in article 9(1) (street works).

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Highway alterations

16.—(1) The undertaker may carry out highway alterations comprised within Work Nos. [] in the plots numbered [] to [] on the land plans.

(2) The highway alterations must be carried out in accordance with plans approved by the highway authority, such approval not to be unreasonably withheld.

(3) If the highway authority fails to notify the undertaker of its decision within 28 days of receiving plans for approval under paragraph (2), the highway authority is deemed to have given approval.

Power to alter layout etc. of streets

17.—(1) Subject to paragraphs (2) and (3), the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with constructing, operating and maintaining the authorised development, alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (b) make and maintain passing place(s).

(2) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(3) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority.

(4) Paragraphs (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Traffic Regulation

18.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may at any time, for the purposes of the construction of the authorised development regulate vehicular speed by imposing speed restrictions on vehicles in the manner specified in Schedule 7 (traffic regulation) on those roads specified in column (1) and along the lengths and between the points specified in column (2) in the manner specified in column (3) of that Part of that Schedule;

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to when the authorised development first becomes operational—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act; and
- (b) make provision as to the maximum speed, direction or priority of vehicular traffic on any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The undertaker must not exercise the powers in paragraphs (1) and (2) unless it has—

- (a) given not less than 28 days' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention as provided for in subparagraph (a).

(4) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (2)—

- (a) has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 7 (traffic regulation) to which the prohibition, restriction or other provision is subject); and

(b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement).

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraphs (1) and (2) at any time prior to the part of the authorised development to which it relates being brought into operational use.

(6) Before complying with the provisions of paragraph (3) the undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated.

(7) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(8) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraphs (1) and (2) the traffic authority is deemed to have granted consent.

PART 4

Supplemental powers

Discharge of water

19.—(1) Subject to paragraphs (3) and (4) below, the undertaker may use any watercourse or any public sewer, drain or other suitable land for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may inspect, lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is determined as if it were a dispute under section 106 of the Water Industry Act 1991^(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not carry out any works to any public sewer or drain pursuant to article 19(1) except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article damage or interfere with the bed or banks of any watercourse forming part of a main river as defined under section 113(1) of the Water Resources Act 1991^(b).

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise any water discharge or groundwater activity for which an environmental permit is required by regulation 12 (requirement for an environmental permit) of the 2016 Regulations.

(a) 1991 c.56. Section 106 was amended by section by sections 43(2) and 35(8)(a) of and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b), (5)(c) and 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order, and section 32, Schedule 3, paragraph 16(1) of the Flood and Water Management Act 2010 c.29.

(b) 1991 c.57.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which either belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority [or one which such body has permissive rights over]; and
- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 have the same meaning as in those Regulations.

(9) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

Authority to survey and investigate the land onshore

20.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or any land which may be affected by the authorised project and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes or bore holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and groundwater and remove soil and groundwater samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including the digging of trenches; and
- (d) place on, leave on and remove from the land apparatus and welfare facilities for use in connection with the survey and investigation of land, environmental monitoring and making of trial holes, bore holes or trenches.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes, bore holes or trenches.

(4) No trial holes, bore holes or trenches may be made under this article—

- (a) in land forming a railway without the consent of Network Rail(a);
- (b) in land held by or in right of the Crown without the consent of the Crown;
- (c) in land located within the highway boundary without the consent of the highway authority; or
- (d) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld or delayed.

(5) Following completion of any survey, monitoring or investigation works the undertaker must remove all equipment, apparatus and welfare facilities placed on the land in connection with such survey, monitoring or investigations.

(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(c) in the case of a highway authority; or
- (b) under paragraph (4)(d) in the case of a street authority;

that authority is deemed to have granted consent.

(8) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Removal of Human Remains

21.—(1) In this article, “the specified land” means the land within the Order limits.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land, it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land, the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3), the undertaker must send a copy of the notice to the relevant planning authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3), any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10), the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the

undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857^(a) (offence of removal of body from burial ground) does not apply to a removal carried out in accordance with this article.

PART 5

Powers of Acquisition

Compulsory acquisition of land

22.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project or to facilitate, or is incidental to, it.

(2) This article is subject to paragraph (2) of article 24 (compulsory acquisition of rights) and article 30 (temporary use of land for carrying out the authorised project).

Time limit for exercise of authority to acquire land compulsorily

23.—(1) After the end of the period of seven years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act^(b) as applied by article 26 (application of the 1981 Act).

(2) The authority conferred by article 30 (temporary use of land for carrying out the authorised project) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

^(a) 1857 c.81.

^(b) Section 4 was amended by sections 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c.22).

Compulsory acquisition of rights

24.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 22 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this article, article 25 (private rights) and article 32 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc. may be acquired), the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights over land and the creation and acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 and Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act, as substituted by paragraph 9 of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions), where the undertaker creates a right or acquires an existing right over land or imposes a restrictive covenant under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of existing rights or new rights or the imposition of restrictive covenants under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights and impose such restrictive covenants to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) Subject to the modifications set out in Schedule 9 the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction as they apply to the compulsory purchase of land and interests in land.

(8) So much of the special category land as is required for the purposes of exercising the powers acquired by the undertaker pursuant to this article is discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of those rights.

Private rights

25.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 22 (compulsory acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 22—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act^(a) (power of entry),

whichever is the earlier.

^(a) Section 11(1) was amended by sections 186 to 188 of the Housing and Planning Act 2016 (c.22), Schedule 4 to the Acquisition of Land Act 1981 (c.67) and Schedule 5 to the Church of England (Miscellaneous Provision) Measure 2006 No 1.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 23 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 32 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of the land,
 - (iii) the undertaker's entry onto the land, or
 - (iv) the undertaker's taking temporary possession of the land,that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If an agreement referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person, the agreement is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

26.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of act), for subsection 2, substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) Section 5 (earliest date for execution of declaration) is omitted.

(5) Section 5A (time limit for general vesting declaration) is omitted.

- (6) In section 5B (extension of time limit during challenge)—
- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
 - (b) for “the three year period mentioned in section 5A” substitute “the seven year period mentioned in article 23 (time limit for exercise of authority to acquire land compulsorily) of the Outer Dowsing Offshore Wind Farm Order 202[]”.
- (7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7 (constructive notice to treat), in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- “(2) But see article 28(1) (acquisition of subsoil or airspace only) of the Outer Dowsing Offshore Wind Farm Order 202[], which excludes the acquisition of subsoil or airspace from this Schedule.”.
- (10) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 23 (application of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

Modification of Part 1 of the Compulsory Purchase Act 1965

27.—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

- (2) In section 4A(1) (extension of time limit during challenge)—
- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
 - (b) for “the three year period mentioned in section 4” substitute “the seven year period mentioned in article 23 (time limit for exercise of authority to acquire land compulsorily) of the Outer Dowsing Offshore Wind Farm Order 202[]”.
- (3) In section 11A (powers of entry: further notice of entry)—
- (a) in subsection (1)(a), after “land” insert “under that provision”;
 - (b) in subsection (2), after “land” insert “under that provision”.
- (4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 23 (time limit for exercise of authority to acquire land compulsorily) of the Outer Dowsing Offshore Wind Farm Order 202[]”.
- (5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
- (a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 28(3) (acquisition of subsoil or airspace only) of the Outer Dowsing Offshore Wind Farm Order 202[], which excludes the acquisition of subsoil or airspace from this Schedule”; and
 - (b) at the end insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 30 (temporary use of land for carrying out the authorised project) or article 31 (temporary use of land for maintaining the authorised project) of the Outer Dowsing Offshore Wind Farm Order 202[].”

Acquisition of subsoil or airspace only

28.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of, or the airspace over, the land referred to in article 22 (compulsory acquisition of land) or article 24 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole, or an interest in the whole, of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over, land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act as modified by Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions);
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

29.—(1) The undertaker may enter on and appropriate so much of the subsoil of or airspace over any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised project.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised project

30.—(1) The undertaker may, in connection with the carrying out of the authorised project—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
 - (b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;
 - (c) construct temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;
 - (d) use the land for the purposes of a working site with access to the working site in connection with the authorised project;
 - (e) construct any works, or use the land, as specified in relation to that land in column 3 of Schedule 10 (land of which temporary possession may be taken), or any mitigation works or operations;
 - (f) construct such works on that land as are mentioned in Part 1 of Schedule 1 (authorised development); and
 - (g) carry out mitigation works required pursuant to the requirements in Schedule 1.
- (2) Not less than 14 days before entering on and taking temporary possession of or using land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (3) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land specified in paragraph 1(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule 10 (land of which temporary possession may be taken); or
 - (b) in the case of land specified in paragraph 1(a)(ii) after the end of the period of one year beginning with the date of completion of the part of the authorised project for which temporary possession of the land was taken, unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—
- (a) replace any building, structure, drain or electric line removed under this article;
 - (b) remove any drainage works installed by the undertaker under this article;
 - (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 2 (streets subject to street works); or
 - (d) restore the land on which any works have been carried out under paragraph (1)(e) or (1)(g) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 1.
- (5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 (determination of disputed compensation) of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 24 (compulsory acquisition of rights) to the extent that such land is listed in column (1) of Schedule 8 (land in which only new rights etc. may be acquired); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 28 (acquisition of subsoil or airspace only).

(9) Where the undertaker takes possession of or uses land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act^(a) (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) So much of the special category land as is required for the purposes of exercising the powers pursuant to this article is temporarily discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of those powers, and only for such time as any special category land is being used under this article.

Temporary use of land for maintaining authorised project

31.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

^(a) Section 13 was amended by Tribunals Courts and Enforcement Act 2007 (c.15).

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period”, in relation to any part of the authorised project, means—

- (a) the period of five years beginning with the date on which the authorised project first exports electricity to the national electricity transmission network; and
- (b) any period falling between the date at which temporary possession is no longer permitted under article 30(3) and the date on which the authorised project first exports electricity to the national electricity transmission network.

(12) So much of the special category land as is required for the purposes of exercising the powers pursuant to this article is temporarily discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of those powers, and only for such time as any special category land is being used under this article.

Statutory undertakers

32. Subject to the provisions of Schedule 16 (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the Order land and described in the book of reference; and
- (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Recovery of costs of new connections

33.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 32 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 32, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the 2003 Act; and

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

PART 6

Operations

Deemed marine licences under the 2009 Act

34. The marine licences set out in Schedule 11 (deemed licence under the 2009 Act – generation assets), Schedule 12 (deemed licence under the 2009 Act – offshore transmission assets) and Schedule 13 (deemed licence under the 2009 Act – artificial nesting structure(s)) are deemed to have been granted to the undertaker under Part 4 (marine licensing) of the 2009 Act for the licensed marine activities set out in Part 1, and subject to the conditions set out in Part 2, of each licence.

PART 7

Miscellaneous and general

Application of landlord and tenant law

35.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants may prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

36. Development consent granted by this Order is treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land).

Felling or lopping of trees and removal of hedgerows

37.—(1) Subject to article 38 (trees subject to tree preservation orders), the undertaker may fell or lop any tree or shrub within or overhanging the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised project—

- (a) subject to paragraph (2) above, remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised project; and
- (b) remove the important hedgerows as are within the Order limits and specified in Schedule 14 (removal of important hedgerows).

(5) In this article "hedgerow" and "important hedgerow" have the same meaning as in the Hedgerows Regulations 1997.

Trees subject to tree preservation orders

38.—(1) The undertaker may fell or lop or cut back the roots of any tree within or overhanging land within the Order limits that is subject to a tree preservation order if it reasonably believes it to be necessary in order to do so to prevent the tree—

- (a) from obstructing or interfering with the onshore preparation works, or any apparatus used in connection with the onshore preparation works;
- (b) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or
- (c) from constituting an unacceptable source of danger (whether to children or to other persons).

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must not cause unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, will be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Protective provisions

39. Schedule 16 (protective provisions) has effect.

Arbitration

40.—(1) Subject to article 44 (saving provision for Trinity House), any dispute or difference arising out of or in connection with any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at Schedule 17 (arbitration rules) to this Order by a single arbitrator to be agreed between the parties, within 14

days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration.

Requirements, appeals, etc.

41.—(1) Where an application is made to, or a request is made of, the relevant planning authority or any other relevant person for any agreement or approval required or contemplated by any of the provisions of this Order, such agreement or approval must, if given, be given in writing and must not be unreasonably withheld or delayed

(2) Schedule 18 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals required or contemplated by the requirements within Part 3 of Schedule 1 (requirements) to this Order.

Certification of plans etc.

42.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the documents listed in Schedule 19 (documents to be certified) for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies that provision by a number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

Abatement of works abandoned or decayed

43. Where Work Nos. 1(a), 2, 3 or 7 or any part of those works is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, issue a written notice requiring the undertaker at its own expense to repair and restore or remove Work Nos. 1(a), 2, 3 or 7 or any relevant part of those works, without prejudice to any notice served under section 105(2) of the 2004 Act^(a). The notice may also require the restoration of the site of the relevant part(s) of Work Nos. 1(a), 2, 3 or 7 to a safe and proper condition within an area and to such an extent as may be specified in the notice.

Saving provisions for Trinity House

44. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown rights

45.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any

^(a) Section 105(2) was substituted by section 69(3) of the Energy Act 2008 (c. 32).

lessee or licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Funding

46.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security for that purpose, that has been approved by the Secretary of State.

(2) The provisions are—

- (a) article 22 (compulsory acquisition of land);
- (b) article 24 (compulsory acquisition of rights);
- (c) article 25 (private rights);
- (d) article 28 (acquisition of subsoil or airspace only);
- (e) article 29 (rights under or over streets);
- (f) article 30 (temporary use of land for carrying out the authorised project);
- (g) article 31 (temporary use of land for maintaining the authorised project); and
- (h) article 32 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Compensation provisions

47. Schedule 20 (compensation measures) has effect.

Service of notices

48.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.
- (2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.
- (3) For the purposes of section 7 (references to services by post) of the Interpretation Act 1978 as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—
- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
 - (b) in any other case, the last known address of that person at the time of service.
- (4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—
- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
 - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement will be taken to be fulfilled only where—
- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
 - (b) the notice or document is capable of being accessed by the recipient;
 - (c) the notice or document is legible in all material respects; and
 - (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender will provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
 - (b) such revocation will be final and will take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article will not be taken to exclude the employment of any method of service not expressly provided for by it.
- (10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Signed by authority of the Secretary of State for Energy Security and Net Zero

Name

SCHEDULE 1

Authorised project

Article 2

PART 1

Authorised development

1. A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act which is located in the North Sea approximately 54 kilometres from the Lincolnshire coast, comprising—

Work No. 1—

- (a) an offshore wind turbine generating station with a gross electrical output capacity of over 100 MW comprising up to 93 wind turbine generators each fixed to the seabed by either monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations fitted with rotating blades and situated within the area shown on the works plans and further comprising (b) below;
- (b) a network of subsea array cables between the wind turbine generators and between the wind turbine generators and the offshore transformer substations forming part of Work No. 3 including one or more cable crossings;

and associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising—

Work No. 2— up to one offshore accommodation platform fixed to the seabed by either monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations;

Work No. 3—

- (a) up to four small offshore transformer substations each fixed to the seabed by monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations; or
- (b) up to two large offshore transformer substations each fixed to the seabed by monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations;

Work No. 4— a network of interlink cables between the offshore transformer substations comprised within Work No. 3 and between the offshore transformer substations and the offshore accommodation platform comprised within Work No. 2, for the transmission of electricity and electronic communications, including one or more cable crossings;

Work No. 5— up to four cable circuits between Work No.3 and Work No.7, and between Work No.7 and Work No.11 or between Work No.3 and Work No.11 consisting of offshore export cables along routes within the Order limits seaward of MLWS including one or more cable crossings;

Work No. 6— up to six temporary trenchless technique exit pits and associated cofferdams;

Work No. 7— up to two offshore reactive compensation platforms fixed to the seabed by monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations;

Work No. 8— a temporary work area associated with Works Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11 for vessels to carry out anchoring and positioning, and for the wet storage of construction materials;

Work No. 9— offshore artificial nesting structure(s);

Work No. 10— special area of conservation compensatory measures [*Note: these works will be defined following PEIR consultation*]

Between MLWS and MHWS and in the County of Lincolnshire, District of East Lindsey

Work No. 11— landfall connection works consisting of up to four underground cable circuits and up to six associated cable ducts to Work No. 12;

In the County of Lincolnshire, District of East Lindsey, the Borough of Boston and the District of South Holland—

Work No. 12— onshore connection works consisting of—

- (a) up to six trenchless technique drilling launch pits;
- (b) up to four underground cable circuits and up to six associated cable ducts to Work No. 13;
- (c) up to six transition joint bays including ground preparation and ground-raising;
- (d) a landfall logistics compound;
- (e) construction of a haul road; and
- (f) vehicular access tracks and footpaths;

Work No. 13— works consisting of—

- (a) up to four underground cable circuits and associated cable ducts to Work No. 14;
- (b) up to 700 link boxes or earth pits ; and
- (c) up to 700 joint bays;
- (d) temporary trenchless technique compounds;
- (e) construction of a haul road; and
- (f) vehicular access tracks, bellmouths, visibility splays and associated footpaths;

Work No. 14— works consisting of—

- (a) an onshore HVAC substation;
- (b) up to four underground cable circuits and associated cable ducts;
- (c) construction of a haul road;
- (d) vehicular access tracks, bellmouths, visibility splays and associated footpaths;
- (e) water attenuation feature(s);
- (f) landscaping; and
- (g) ground preparation and ground-raising;

Work No. 15— connection works consisting of up to four underground cable circuits and cable ducts between the onshore HVAC substation forming part of Work No. 14 and a National Grid substation, including a connection above ground and electrical engineering works within or around the National Grid substation buildings and compound, and onshore construction works.

Work No. 16— temporary vehicular access tracks, bellmouths, visibility splays and associated footpaths to serve Work Nos. 11, 12, 13, 14 and 15.

Work No. 17— temporary works consisting of—

- (a) temporary works areas to support the construction activities in Work Nos. 11, 12, 13, 14 and 15;
- (b) temporary logistics compounds to support the construction of Work Nos. 13, 14 and 15;
- (c) temporary construction ramps;

- (d) storage areas to assist with the onshore transmission works; and
- (e) vehicular access tracks, bellmouths, visibility splays and associated footpaths

Work No. 18— permanent vehicular access tracks to serve Work Nos. 14 and 20, bellmouths, visibility splays and associated footpaths;

Work No. 19— highway improvements consisting of—

- (a) []

Work No. 20— works comprising the reinforcement or replacement of the bridge together with a temporary construction works area;

In connection with such Work Nos. 1 to 11 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection measures such as but not limited to the placement of rock, split pipe system, and/or mattresses;
- (c) cable crossings;
- (d) dredging;
- (e) the removal of material from the seabed required for the construction of Work Nos. 1 to 11 and the disposal of inert material of natural origin and dredged material within the Order limits produced during construction drilling, seabed preparation for foundation works, cable installation preparation works (such as sandwave clearance and boulder clearance) and excavation of trenchless technique drilling pits; and
- (f) removal of static fishing equipment;

and in connection with such Work Nos. 11 to 20 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

- (a) haul roads, ramps, bridges, means of access and footpaths, creation and enhancement of tracks and footpaths;
- (b) bunds, embankments, swales, landscaping, ground preparation, ground-raising, signage, fencing and boundary treatments;
- (c) habitat creation and enhancement;
- (d) spoil storage and associated control measures;
- (e) joint bays, link boxes, earth pits, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable marker, tiles and tape, and lighting and other works associated with cable laying and pulling cables through cable ducts;
- (f) works for the provision of apparatus including cabling, water and electricity supply works, foul drainage provision, surface water management systems and culverting;
- (g) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (h) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (i) landscaping and related works;
- (j) other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised project;
- (k) works for the benefit or protection of land affected by the authorised project;

- (l) working sites in connection with the construction of the authorised project, construction lay down areas and compounds, storage compounds and their restoration;
- (m) works of restoration; and
- (n) fencing or other means of enclosure.

2. The grid coordinates for that part of the authorised project which is seaward of MHWS are specified below and more particularly shown on the Order limits boundary coordinates plan (offshore)—

[Table of grid co-ordinates will be inserted at application stage]

PART 2

Ancillary Works

1. Works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating or anchoring vessels in the construction and/or maintenance of the authorised development;
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works;
- (c) temporary works for the benefit or protection of land or structures affected by the authorised development; and
- (d) planting of hedgerows and trees.

PART 3

Requirements

Time Limits

1. The authorised project must commence no later than the expiration of five years beginning with the date this Order comes into force.

Detailed offshore design parameters

Wind turbine generator dimensions

2.—(1) Subject to sub-paragraph (2), each wind turbine generator forming part of the authorised project must not—

- (a) exceed a height of 403 metres when measured from LAT to the tip of the vertical blade;
- (b) exceed a rotor diameter of 340 metres;
- (c) be less than 30 metres from MSL to the lowest point of the rotating blade; and
- (d) be less than 605 metres from blade tip to the blade tip of the nearest wind turbine generator;

(2) The reference in sub-paragraph (1)(d) to the location of a wind turbine generator is a reference to the centre point of that wind turbine generator.

(3) Wind turbine generator foundation structures forming part of the authorised project must be one of the following foundation options: monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations.

(4) In respect of a wind turbine generator—

- (a) no monopile foundation may have a diameter greater than 13 metres;

- (b) no gravity base structure foundation may have a diameter at the level of the seabed greater than 55 metres;
- (c) no pin pile jacket foundation forming part of the authorised project may—
 - (i) have a pin pile diameter of greater than five meters; or
 - (ii) employ more than four pin piles per jacket foundation;
- (d) no suction bucket jacket foundation forming part of the authorised project may—
 - (i) have a suction bucket diameter of greater than 20 meters; or
 - (ii) employ more than four suction buckets per jacket foundation;
- (5) The total seabed footprint area for wind turbine generator foundations must not exceed—
 - (a) 223,200 square metres excluding scour protection; and
 - (b) 1,385,700 square metres including scour protection.

Offshore electrical installations and offshore accommodation platforms

3.—(1) The total number of offshore electrical installations and offshore accommodation platforms must not exceed seven, consisting of a combination of no more than—

- (a) four small offshore transformer substations or two large offshore transformer substations;
- (b) two offshore reactive compensation platforms; and
- (c) one offshore accommodation platform.

(2) The dimensions of any small offshore transformer substation comprised within Work No. 3(a) (including auxiliary structures, such as a helipad, crane, lightning protection, but excluding masts, radar and antennae) forming part of the authorised project must not exceed—

- (a) 90 metres in height when measured from LAT;
- (b) 90 metres in length; and
- (c) 90 metres in width.

(3) The dimensions of any large offshore transformer substation comprised within Work No. 3(b) (including auxiliary structures, such as a helipad, crane, lightning protection, but excluding masts, radar and antennae) forming part of the authorised project must not exceed—

- (a) 100 metres in height when measured from LAT;
- (b) 160 metres in length; and
- (c) 110 metres in width.

(4) The dimensions of any offshore reactive compensation platform (including auxiliary structures, such as a helipad, crane, lightning protection, but excluding masts, radar and antennae) forming part of the authorised project must not exceed—

- (a) 90 metres in height when measured from LAT;
- (b) 90 metres in length; and
- (c) 90 metres in width.

(5) The dimensions of the offshore accommodation platform forming part of the authorised project must not exceed—

- (a) 80.2 metres in height when measured from LAT;
- (b) 84 metres in length; and
- (c) 84 metres in width.

(6) Offshore accommodation platform foundation structures forming part of the authorised project must be one of either monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations.

(7) Offshore electrical installation foundation structures forming part of the authorised project must be one of either monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations.

(8) In respect of an offshore electrical installation and offshore accommodation platform—

- (a) no monopile foundation may have a diameter greater than 14 metres;
- (b) no gravity base structure foundation may exceed, at the level of the seabed—
 - (i) a length of 72 metres; or
 - (ii) a width of 36 metres;
- (c) no pin pile jacket foundation forming part of the authorised project may—
 - (i) have a pin pile diameter of greater than five meters; or
 - (ii) employ more than 24 pin piles per jacket foundation;
- (d) no suction bucket jacket foundation forming part of the authorised project may—
 - (i) have a suction bucket diameter of greater than 20 meters; or
 - (ii) employ more than eight suction buckets per jacket foundation;

(9) The total seabed footprint area for offshore accommodation platform foundations must not exceed—

- (a) 2,592 square metres excluding scour protection; and
- (b) 19,600 square metres including scour protection.

(10) The total seabed footprint area for offshore electrical installation foundations must not exceed—

- (a) 15,552 square metres excluding scour protection; and
- (b) 117,600 square metres including scour protection.

4. The total volume of scour protection for wind turbine generators, offshore accommodation platforms and offshore electrical installations must not exceed 3,845,550 cubic metres.

5.—(1) In respect of the offshore export cables comprised within Work No. 5, the number of cable circuits must not exceed four.

(2) The cable circuits comprising Work No. 1(b) must not—

- (a) exceed 351 kilometres in length; and
- (b) be subject to cable protection with an area greater than 1,404,000 square metres.

(3) The cable circuits comprising Work No. 4 must not—

- (a) exceed 123 kilometres in length; and
- (b) be subject to cable protection with an area greater than 495,000 square metres.

(4) The cable circuits comprising Work No. 5 must not—

- (a) exceed 514.8 kilometres in length; and
- (b) be subject to cable protection with an area greater than 2,059,200 square metres.

(5) The total number of the cable crossings must not exceed—

- (a) 20, in respect of the array cables comprised within Work No. 1(b);
- (b) 12, in respect of the interlink cables comprised within Work No. 4; and
- (c) 20, in respect of the offshore export cables comprised within Work No. 5

unless otherwise agreed with the MMO.

(6) The total volume of cable protection must not exceed 4,452,975 cubic metres with a maximum footprint of 3,958,200 square metres.

Offshore decommissioning

6. No offshore works may commence until a written decommissioning programme in compliance with any notice served upon the undertaker by the Secretary of State pursuant to section 105(2) of the 2004 Act has been submitted to the Secretary of State for approval.

Stages of authorised development onshore

7.—(1) The onshore transmission works may not be commenced until a written scheme setting out the stages of the onshore transmission works has been submitted to and approved by the relevant planning authority.

(2) Any amendments to the approved written scheme must be submitted to, and approved by, the relevant planning authority.

(3) The scheme must be implemented as approved. The approved details shall be taken to include any amendments that may subsequently be approved in accordance with sub-paragraph (2).

Detailed onshore design parameters

8.—(1) No stage of Work No. 14 may commence until details of the layout, scale and external appearance of the onshore HVAC substation and the proposed finished ground levels have been submitted to and approved by the relevant planning authority.

(2) Work No. 14 must be carried out in accordance with the approved details.

(3) The details submitted under sub-paragraph (1) must be in accordance with the onshore substation design principles statement.

(4) The cable ducts and cables comprised within Work No. 11 must be installed using a trenchless technique.

Provision of landscaping

9.—(1) No stage of the onshore transmission works may commence until for that stage a written landscape management plan and associated work programme (which accords with the outline landscape and ecological management strategy) has been submitted to and approved by the relevant planning authority.

(2) The written landscape management plan(s) and associated work programme(s) must be implemented as approved.

Implementation and maintenance of landscaping

10.—(1) All landscaping works must be carried out and maintained in accordance with the landscape management plan(s) approved under requirement 9 (provision of landscaping), and in accordance with the relevant recommendations of appropriate British Standards.

(2) Any tree or shrub planted as part of an approved landscape management plan 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 with a specimen of the same species and size as that originally planted unless alternative timing or a different specimen is otherwise approved by the relevant planning authority.

Highway Accesses

11.—(1) Construction of any new permanent or temporary means of access to a highway, or alteration of an existing means of access to a highway, must not begin until an access plan for that access has been submitted to and approved by the relevant highway authority.

(2) The access plan must include details of the siting, design, layout, visibility splays, access management measures, lighting, signing, safety measures and a maintenance programme relevant to the access it relates to.

(3) The highway accesses (including visibility splays) must be constructed, altered and maintained in accordance with the approved details.

Ecological management plan

12.—(1) No stage of the onshore works may commence until for that stage a written ecological management plan (which accords with the outline landscape and ecological management strategy) reflecting survey results, and the ecological mitigation measures included in the environmental statement, has been submitted to and approved by the relevant planning authority in consultation with the relevant statutory nature conservation body.

(2) Onshore preparation works may not be carried out until a written ecological management plan (which accords with the outline landscape and ecological management strategy) for those works reflecting survey results and the ecological mitigation measures included in the environmental statement has been submitted to and approved by the relevant planning authority in consultation with the relevant statutory nature conservation body.

(3) The ecological management plan(s) must include an implementation timetable and must be carried out as approved.

Fencing and other means of permanent enclosure

13.—(1) No stage of the onshore transmission works may commence until details of all proposed permanent fences, walls or other means of enclosure of that stage of the onshore transmission works have been submitted to and approved by the relevant planning authority.

(2) Any permanent fencing and other means of enclosure must be provided and maintained in accordance with the approved details.

(3) Any approved permanent fencing in relation to the onshore transmission works in Work No. 14 must be completed before those works are brought into use and must be maintained for the operational lifetime of the onshore transmission works in Work No. 14.

Temporary fencing and other temporary means of enclosure

14.—(1) The details of any temporary fences, walls, or other means of enclosure required for the construction of the onshore transmission works must be included in the code of construction practice approved under requirement 19 (Code of construction practice) and must accord with the outline code of construction practice.

(2) All construction sites must remain securely enclosed at all times during construction of the onshore transmission works in accordance with the details approved under sub-paragraph (1) above.

Operational drainage management plan

15.—(1) No part of Work No. 14 may commence until an operational drainage management plan in respect of that part (which accords with the outline operational drainage management plan) and includes provision for the maintenance of any measures identified, has been submitted to and approved by the relevant planning authority, in consultation with the lead local flood authority and the Environment Agency.

(2) The operational drainage management plan must be implemented as approved.

Contaminated land and groundwater

16.—(1) No stage of the onshore transmission works or may commence until a written scheme to deal with the contamination of any land (including groundwater) of that stage of the onshore

transmission works within the Order limits that 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.

(2) The scheme must include an investigation and assessment report, to identify the extent of any contamination and the remedial measures to be taken for that stage 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.

(3) Remediation identified in the approved scheme must be carried out in accordance with the approved scheme.

Onshore archaeology

17.—(1) No stage of the onshore transmission works may commence until a written scheme of archaeological investigation (which must accord with the outline written scheme of investigation (onshore archaeology)) for that stage has been submitted to and approved by Lincolnshire County Council in consultation with the relevant planning authority and Historic England.

(2) Archaeological investigations carried out as part of onshore preparation works must only take place in accordance with a specific written scheme of investigation (which must accord with the outline written scheme of investigation (onshore archaeology)) which has been submitted to and approved by Lincolnshire County Council in consultation with the relevant planning authority and Historic England.

(3) All archaeological investigations (other than archaeological investigations carried out as part of onshore site preparation works referred to in sub-paragraph (2)) must be carried out in accordance with the written scheme of archaeological investigation approved under sub-paragraph (1).

(4) In the event that archaeological site investigation is required, the archaeological site investigations and post investigation assessment must be completed in accordance with the programme set out in the written scheme of archaeological investigation and provision made for analysis, publication and dissemination of results and archive deposition.

Code of construction practice

18.—(1) No stage of the onshore transmission works may commence until a code of construction practice (which must accord with the outline code of construction practice) for that stage has been submitted to and approved by the relevant planning authority following consultation, as appropriate, with Lincolnshire County Council, the Environment Agency, relevant statutory nature conservation body and, if applicable, the MMO.

(2) Any code of construction practice submitted under sub-paragraph (1) may cover one or more stages of the onshore transmission works.

(3) All construction works for each stage must be undertaken in accordance with the relevant approved code of construction practice.

Construction hours

19.—(1) Except as otherwise agreed in the code of construction practice and subject to paragraphs (2) to (4), construction of the onshore transmission works and construction-related traffic movements to or from the site of the relevant work may take place only between 0700 hours and 1900 hours Monday to Saturday, with no activity on Sundays or bank holidays.

(2) Subject to paragraphs (3) and (4), construction of the onshore works and construction-related traffic movements to or from the site of the relevant work may take place outside the hours specified in paragraph (1) for certain identified works including, but not limited to—

- (a) where continuous periods of construction are required, for works such as concrete pouring and finishing, operation of a trenchless technique, electrical circuit pulling and jointing and testing;

- (b) for the delivery and unloading of abnormal loads;
- (c) for the landfall works; and
- (d) for any other time-critical element of the onshore transmission works.

(3) Except as provided in paragraph (4), all construction works which are to be undertaken outside the hours specified in paragraph (1) must be agreed in advance with the relevant planning authority.

(4) In respect of trenchless techniques—

- (a) where continuous 24-hour working is required, the undertaker must notify the relevant planning authority in advance of such works;
- (b) where a trenchless technique is to take place within 100 metres of an occupied dwelling, the works must take place within the hours specified in paragraph (1) unless otherwise agreed in advance with the resident of that dwelling and notified to the relevant planning authority.

Traffic

20.—(1) No stage of the onshore transmission works may commence until for that stage the following have been submitted to and approved by the relevant highway authority in consultation with the relevant planning authority—

- (a) a construction traffic management plan which must be in accordance with the outline construction traffic management plan; and
- (b) a travel plan which must be in accordance with the outline travel plan.

(2) The plans approved under paragraph (1) must be implemented upon commencement of the relevant stage of the onshore works.

Public rights of way

21.—(1) No stage of the authorised development or onshore preparation works that would affect a public right of way specified in Schedule 3 (public rights of way to be temporarily stopped up) or Schedule 4 (footpaths to be stopped up) is to be undertaken until a public access management plan in respect of that stage and in accordance with the outline public access management plan, including the specification for the making up of an alternative right of way (where appropriate) has been submitted to and approved by the relevant highway authority in consultation with the relevant planning authority.

(2) Any alternative public rights of way must be implemented in accordance with the approved public access management plan.

Restoration of land used temporarily for construction

22. Any land landward of mean low water springs within the Order limits which is used temporarily for construction of the onshore works and not ultimately incorporated in permanent works or approved landscaping must be reinstated, in accordance with such details as the relevant planning authority in consultation with the relevant highway authority may approve, within twelve months of completion of the relevant stage of the onshore works or such other period as the relevant planning authority may approve.

Onshore decommissioning

23.—(1) The undertaker must notify the relevant planning authority of the permanent cessation of commercial operation of the onshore transmission works within 14 days following the date of permanent cessation.

(2) Within six months following the permanent cessation of commercial operation of the onshore transmission works an onshore decommissioning plan in respect of the onshore transmission works must be submitted to and approved by the relevant planning authority in

consultation with the relevant highway authority and the relevant statutory nature conservation body.

(3) The decommissioning plans must be implemented as approved.

Aviation Lighting

24. The undertaker must exhibit such lights, with such shape, colour and character as are required in writing by Air Navigation Order 2016 and determined necessary for aviation safety in consultation with the Defence Infrastructure Organisation Safeguarding and as directed by the Civil Aviation Authority.

Requirement for written approval

25. Where under any of the above requirements the approval or agreement of the Secretary of State, the relevant planning authority or another person is required, that approval or agreement must be given in writing

Amendments to approved details

26.—(1) With respect to any requirement which requires the authorised project to be carried out in accordance with the details approved by the relevant planning authority or another person, the approved details must be carried out as approved unless an amendment or variation is previously approved in writing by the relevant planning authority or that other person in accordance with subparagraph (2).

(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority or that other person 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.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority or that other person.

SCHEDULE 2

Article 9

Streets subject to street works

(1) Area

(2) Street subject to street works

SCHEDULE 3

Article 11

Footpaths to be stopped up

<i>(1) Area</i>	<i>(2) Footpath to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New footpath to be substituted</i>
		[Described by reference to points shown on the permanent stopping up of public rights of way plan]	[Described by reference to points shown on the permanent stopping up of public rights of way plan]

SCHEDULE 4

Article 12

Public rights of way to be temporarily stopped up

<i>(1) Area</i>	<i>(2) Public right of way to be temporarily stopped up</i>	<i>(3) Extent of temporary stopping up</i>	<i>(4) Temporary public right of way to be substituted</i>
		[Described by reference to points shown on the temporary stopping up of public rights of way plan]	[Described by reference to points shown on the temporary stopping up of public rights of way plan]

SCHEDULE 5

Article 13

Streets to be temporarily stopped up

<i>(1) Area</i>	<i>(2) Street to be temporarily stopped up</i>	<i>(3) Extent of temporary stopping up, alteration or diversion</i>

SCHEDULE 6

Article 14

Access to works

(1) Area

(2) Description of access

SCHEDULE 7

Article 50

Traffic regulation

[Council]

(1) Road

*(2) Extent as shown on the
Traffic Regulation Order
Plans*

(3) Note

Example: Speed limit to be
reduced to 30mph for the
duration of the construction of
the authorised development.

SCHEDULE 8

Article 24

Land in which only new rights etc. may be acquired

(1) Number of land shown on land plan

(2) Purpose for which rights may be acquired

SCHEDULE 9

Article 24

Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, The Land Compensation Act 1973 has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 5—

- (a) for "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and
- (b) for "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) (powers of entry) of the 1965 Act (as modified by paragraph 7 of Schedule 9 to the Outer Dowsing Offshore Wind Farm Order 20[]); and
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 10 of Schedule 9 to the Outer Dowsing Offshore Wind Farm Order 20[]) to acquire an interest in the land, and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”

Application of the 1965 Act

4.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restriction with the modifications specified in the following provisions of this Schedule.

5. For section 7 of the 1965 Act (measure of compensation in case of severance) substitute the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (refusal to convey, failure to make title, etc.);
- (b) paragraph 10(3) of Schedule 1 (conveyance of the land or interest);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 20 (compulsory acquisition of land), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act (tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (interests omitted from purchase) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

10. For Schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A

Counter-notice requiring purchase of land

Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Outer Dowsing Offshore Wind Farm Order 20[] in respect of the land to which the notice to treat relates.

(2) But see article 28(3) (acquisition of subsoil or airspace only) of the Outer Dowsing Offshore Wind Farm Order 202[], which excludes the acquisition of subsoil or airspace from this Schedule.

2. In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the acquiring authority to purchase the owner's interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served ("the decision period").

7. If the acquiring authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the acquiring authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 10

Article 30

Land of which temporary possession may be taken

<i>(1) Area</i>	<i>(2) Number of land shown on land plan</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of the authorised project</i>
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SCHEDULE 11

Article 34

Deemed marine licence under the 2009 Act - generation assets

PART 1

Licensed Marine Activities

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“the 2017 Offshore Regulations” means the Conservation of Offshore Marine Habitats and Species Regulations 2017;

“the 2017 Regulations” means the Conservation of Habitats and Species Regulations 2017;

“array cable” means the cables described in paragraph (b) of Work No. 1 that link the wind turbine generators to each other and to the offshore transformer substations;

“authorised deposits” means the substances and articles specified in paragraph 4 of Part 1 of this licence;

“authorised scheme” means Work Nos. 1, 2, 4 and 8 described in paragraph 3 of Part 1 of this licence or any part of that work;

“buoy” means any floating device used for navigational purposes or measurement purposes, including LiDAR buoys, wave buoys and guard buoys;

“cable crossings” means the crossing of existing sub-sea cables or pipelines or other existing infrastructure by cable circuits authorised by this Order together with physical protection measures including cable protection;

“cable protection” means measures to protect cables from physical damage including the use of bagged solutions filled with grout or other materials, protective aprons or coverings, mattresses, flow energy dissipation devices or rock and gravel burial;

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

“commence” means the first carrying out of any licensed marine activities authorised by this licence, save for operations consisting of offshore preparation works or pre-construction monitoring surveys approved under this licence and the words “commencement” and “commenced” must be construed accordingly;

“condition” means a condition in Part 2 of this licence;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands, B75 7RL and any successor body to its functions;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of Part 4 (marine licensing) of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order under article 42;

“European offshore marine site” has the meaning given in regulation 18 of the 2017 Offshore Regulations;

“European site” has the meaning given in regulation 27 of the 2017 Offshore Regulations;

“gravity base structure” means a structure principally of steel, concrete, or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or additional skirts and associated equipment including scour protection, J-tubes, corrosion protection systems and access platforms and equipment;

“Historic England” means the Historic Buildings and Monuments Commission for England;

“in principle monitoring plan” means the document certified as the in principle monitoring plan by the Secretary of State for the purposes of the Order under article 42;

“in principle Southern North Sea SAC Site Integrity Plan” means the document certified as the in principle Southern North Sea SAC Site Integrity Plan by the Secretary of State for the purposes of the Order under article 42;

“interlink cable” means the cables comprised within Work No. 4 that link the offshore transformer substations to each other and to the offshore accommodation platform;

“JNCC Guidance” means the statutory nature conservation body 'Guidance for assessing the significance of noise disturbance against Conservation Objectives of harbour porpoise SACs'

Joint Nature Conservation Committee Report No.654, May 2020 published in June 2020 as amended, updated or superseded from time to time;

“LAT” means lowest astronomical tide;

“layout principles statement” means the document certified as the layout principles statement by the Secretary of State for the purposes of the Order under article 42;

“licence 2 (transmission)” means the licence set out in Schedule 12 (deemed licence under the 2009 Act – offshore transmission assets);

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace (including replenishment of cable protection), but does not include the removal, reconstruction or replacement of foundations associated with the offshore works, to the extent assessed in the environmental statement; and “maintenance” must be construed accordingly;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“MCA” means the Maritime and Coastguard Agency;

“monopile foundation” means a steel pile, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platforms and equipment;

“offshore accommodation platform” means a structure attached to the seabed by means of a foundation, with one or more decks and a helicopter platform (including bird deterrents), containing housing accommodation, storage, workshop, auxiliary equipment, and facilities for operating, maintaining and controlling the wind turbine generators and offshore electrical installations;

“offshore Order limits” means the limits shown on the works plans within which the authorised scheme may be carried out;

“offshore preparation works” means surveys and monitoring seaward of MHWS undertaken prior to the commencement of construction to prepare for construction;

“offshore transformer substation” means a structure attached to the seabed by means of a foundation, with one or more decks and a helicopter platform (including bird deterrents), containing—

- (a) electrical equipment required to switch, transform, convert electricity generated at the wind turbine generators to a higher voltage and provide reactive power compensation; and
- (b) housing accommodation, storage, workshop auxiliary equipment, radar and facilities for operating, maintaining and controlling the substation or wind turbine generators;

“the Order” means the Outer Dowsing Offshore Wind Farm Order 2021[*];

“outline cable specification and installation plan” means the document certified as the outline cable specification and installation plan by the Secretary of State for the purposes of the Order under article 42;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of the Order under article 42;

“outline marine mammal mitigation protocol” means the document certified as the outline marine mammal mitigation protocol by the Secretary of State for the purposes of this Order under article 42;

“outline written scheme of investigation (offshore archaeology)” means the document certified as the outline written scheme of investigation (offshore archaeology) by the Secretary of State for the purposes of the Order under article 42;

“pin piles” means steel cylindrical piles driven and/or drilled into the seabed to secure steel jacket foundations;

“pin pile jacket foundation” means a jacket/lattice-type structure constructed of steel which is fixed to the seabed at three or more points with steel pin piles and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“relevant site” means a European offshore marine site or a European site; “SAC” means special area of conservation;

“statutory historic body” means Historic England or its successor in function;

“statutory nature conservation body” means the appropriate nature conservation body as defined in regulation 5 of the 2017 Regulations;

“suction bucket” means large diameter steel cylindrical shells which penetrate the seabed assisted by a hydrostatic pressure differential for securing steel jacket foundations;

“suction bucket jacket foundation” means a jacket/lattice-type structure constructed of steel which is fixed to the seabed at three or more points with steel suction buckets and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means GT R4 Limited (company number 13281221);

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation; and

“works plans” means the plans certified as the works plans by the Secretary of State for the purposes of the Order.

(2) reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

(a) all times are taken to be Greenwich Mean Time (GMT);

(b) all coordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

(a) Marine Management Organisation

Marine Licensing Team

Lancaster House Hampshire Court

Newcastle Business Park

Newcastle upon Tyne

NE4 7YH

Tel: 0300 123 1032;

- (b) Marine Management Organisation (local office)

Address: [TBC]

Tel: [TBC];

- (c) Trinity House

Tower Hill

London

EC3N 4DH

Tel: 020 7481 6900;

- (d) The United Kingdom Hydrographic Office

Admiralty Way

Taunton

Somerset

TA1 2DN

Tel: 01823 337 900;

- (e) Maritime and Coastguard Agency

Navigation Safety Branch

Bay 2/20, Spring Place

105 Commercial Road

Southampton

SO15 1EG

Tel: 020 3817 2426/2433;

- (f) Natural England

Area 1C, Nobel House

17 Smith Square

London

SW1P 2AL

Tel: 0300 060 4911a;

- (g) Historic England

The Foundry

82 Granville Street

Birmingham

B1 2LH

Tel: 0121 625 6888.

2. Subject to the licence conditions at Part 2, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act—

- (a) the deposit at sea of the substances and articles specified in paragraph 4 below;
- (b) the construction of works in or over the sea or on or under the sea bed;
- (c) dredging for the purposes of seabed preparation for foundation works and cable laying preparation works;
- (d) debris clearance works;
- (e) boulder clearance works either by displacement ploughing or subsea grab technique or other equivalent method;
- (f) the removal of out of service cables;

- (g) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation;
- (h) removal of static fishing gear; and
- (i) the disposal of up to 17,450,600 cubic metres of inert material of natural origin and/or dredged material within the offshore Order limits produced during construction drilling or seabed preparation for foundation works, sandwave clearance and boulder clearance works at disposal site reference(s) to be provided by the MMO within the extent of the Order limits seaward of MHWS (some of which may alternatively be disposed under licence 2 (transmission)).

3. Such activities are authorised in relation to the construction, maintenance and operation of—

Work No. 1—

- (a) an offshore wind turbine generating station with a gross electrical output capacity of over 100 MW comprising up to 93 wind turbine generators each fixed to the seabed by either monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations fitted with rotating blades and situated within the area shown on the works plans and further comprising (b) below;
- (b) a network of subsea array cables between the wind turbine generators and between the wind turbine generators and the offshore transformer substations forming part of Work No. 3 including one or more cable crossings;

Work No. 2— up to one offshore accommodation platform fixed to the seabed by either monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations (which may alternatively be constructed under licence 2 (transmission));

Work No. 4— a network of interlink cables between the offshore transformer substations comprised within Work No. 3 and between the offshore transformer substations and the offshore accommodation platform comprised within Work No. 2, for the transmission of electricity and electronic communications, including one or more cable crossings (which may alternatively be constructed under licence 2 (transmission), in whole or in part);

Work No. 8— a temporary work area associated with Works Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11 for vessels to carry out anchoring and positioning, and for the wet storage of construction materials;

In connection with such Work Nos. 1, 2, 4 and 8 and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection measures such as but not limited to the placement of rock, split pipe system, and/or mattresses;
- (c) cable crossings;
- (d) dredging;
- (e) the removal of material from the seabed required for the construction of Work Nos. 1, 2, 4 and 8 and the disposal of inert material of natural origin and dredged material within the Order limits produced during construction drilling, seabed preparation for foundation works and cable installation preparation works (such as sandwave clearance and boulder clearance); and
- (f) removal of static fishing equipment.

In connection with such Work Nos. 1, 2, 4 and 8, ancillary works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating or anchoring vessels in the construction and/or maintenance of the authorised development; and
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works.

4. The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete and grout;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works, cable preparation works and sandwave clearance works;
- (g) weights used for the calibration of vessels, consisting of a hessian sack, metal shackles or chains; and
- (h) marine coatings, other chemicals and timber.

5. The grid coordinates for the authorised scheme are specified below—

<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>
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6. This licence remains in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 (approval of decommissioning programmes) of the 2004 Act, including any modification to the programme under section 108 (reviews and revisions of decommissioning programmes) of the 2004 Act, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of section 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 6 (benefit of the Order).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

9. Any amendments to the details, plan or scheme must be in accordance with the principles and assessments set out in the environmental statement, and approval for an amendment may be given only where it has been demonstrated to the satisfaction of the MMO that the amendment is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

PART 2

Conditions

Design parameters

1.—(1) Subject to sub-paragraph (2), each wind turbine generator forming part of the authorised project must not—

- (a) exceed a height of 403 metres when measured from LAT to the tip of the vertical blade;
- (b) exceed a rotor diameter of 340 metres;
- (c) be less than 30 metres from MSL to the lowest point of the rotating blade; and
- (d) be less than 605 metres from blade tip to the blade tip of the nearest wind turbine generator;

(2) The reference in sub-paragraph 1(1)(d) to the location of a wind turbine generator is a reference to the centre point of that wind turbine generator.

(3) Wind turbine generator foundation structures forming part of the authorised scheme must be one of the following foundation options: monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations.

(4) In respect of a wind turbine generator—

- (a) no monopile foundation may have a diameter greater than 13 metres;
- (b) no gravity base structure foundation may have a diameter at the level of the seabed greater than 55 metres;
- (c) no pin pile jacket foundation forming part of the authorised project may—
 - (i) have a pin pile diameter of greater than five meters; or
 - (ii) employ more than four pin piles per jacket foundation;
- (d) no suction bucket jacket foundation forming part of the authorised project may—
 - (i) have a suction bucket diameter of greater than 20 meters; or
 - (ii) employ more than four suction buckets per jacket foundation;

(5) The total seabed footprint area for wind turbine generator foundations must not exceed—

- (a) 223,200 square metres excluding scour protection; and
- (b) 1,385,700 square metres including scour protection.

2.—(1) The total number of offshore accommodation platforms forming part of the authorised scheme and the authorised scheme in licence 2 (transmission) taken together must not exceed one (whether constructed under this licence or licence 2 (transmission)).

(2) The dimensions of the offshore accommodation platform forming part of the authorised scheme must not exceed—

- (a) 80.2 metres in height when measured from LAT;
- (b) 84 metres in length; and
- (c) 84 metres in width.

(3) Offshore accommodation platform foundation structures forming part of the authorised project must be one of either monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations.

(4) In respect of an offshore accommodation platform—

- (a) no monopile foundation may have a diameter greater than 14 metres;
- (b) no gravity base structure foundation may exceed, at the level of the seabed—
 - (i) a length of 72 metres; or
 - (ii) a width of 36 metres;

- (c) no pin pile jacket foundation forming part of the authorised project may—
 - (i) have a pin pile diameter of greater than five meters; or
 - (ii) employ more than 24 pin piles per jacket foundation;
- (d) no suction bucket jacket foundation forming part of the authorised project may—
 - (i) have a suction bucket diameter of greater than 20 meters; or
 - (ii) employ more than eight suction buckets per jacket foundation;
- (5) The total seabed footprint area for offshore accommodation platform foundations must not exceed—
 - (a) 2,592 square metres excluding scour protection; and
 - (b) 19,600 square metres including scour protection.

3. The total length of the cables forming part of the authorised scheme and the authorised scheme in licence 2 (transmission) and the volume and area of their cable protection must not exceed the following (whether installed under this licence or licence 2 (transmission))—

<i>Work</i>	<i>Length</i>	<i>Area of cable protection</i>	<i>Volume of cable protection</i>
Work No. 1(b) (array cable)	351km	1,404,000m ²	1,579,500m ³
Work No. 4 (interlink cables)	123km	495,000m ²	556,875m ³

Maintenance of the authorised scheme

4.—(1) The undertaker may at any time maintain the authorised scheme, except to the extent that this licence or an agreement made under this licence provides otherwise.

(2) No maintenance works whose likely effects are not assessed in the environmental statement may be carried out, unless otherwise approved by the MMO.

(3) Maintenance works include but are not limited to—

- (a) major wind turbine component or offshore accommodation platform replacement;
- (b) painting and applying other coatings to wind turbine generators or offshore accommodation platforms;
- (c) bird waste and marine growth removal;
- (d) cable remedial burial;
- (e) cable repairs and replacement;
- (f) cable protection replenishment;
- (g) access ladder and boat landing replacement;
- (h) wind turbine generator and accommodation platform anode replacement; and
- (i) J-tube repair/replacement.

(4) Where the MMO's approval is required under paragraph (2), approval may be given only where it has been demonstrated to the satisfaction of the MMO that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Vessels under the undertaker's control

5.—(1) The undertaker must issue to operators of vessels under its control operating within the Order limits a code of conduct to prevent collision risk or injury to marine mammals.

(2) The undertaker must ensure appropriate co-ordination of vessels within its control operating within the Order limits so as to reduce collision risk to other vessels including advisory safe passing distances for vessels.

Extension of time periods

6. Any time period given in this licence given to either the undertaker or the MMO may be extended with the agreement of the other party in writing such agreement not to be unreasonably withheld or delayed.

Notification and Inspection

7.—(1) The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with condition 16 and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 16;
- (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must confirm receipt of this licence in writing to the MMO.

(2) Only those persons and vessels notified to the MMO in accordance with condition 16 are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

- (a) the undertaker's registered address;
- (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities.

(7) The undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part—

- (a) at least 14 days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and
- (b) as soon as reasonably practicable and no later than 24 hours after completion of construction of all offshore activities.

Confirmation of notification must be provided to the MMO within five days.

(8) A notice to mariners must be issued at least 14 days prior to the commencement of the licensed activities or any part of them advising of the start date of Work No. 1, and to the extent that they are carried out under this licence, Work Nos. 2, 4 and 8, and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO, MCA and UK Hydrographic Office within five days.

(9) The notices to mariners must be updated and reissued at regular intervals during construction activities and at least five days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under condition 13(1)(b). Copies of all notices must be provided to the MMO and UK Hydrographic Office within five days.

(10) The undertaker must notify the UK Hydrographic Office of the commencement (14 days prior), progress and completion of construction (within 14 days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO within five days.

(11) In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify MMO, MCA, Trinity House, Kingfisher Information Service and the UK Hydrographic Office.

(12) In case of exposure of cables on or above the seabed, the undertaker must, within three days following identification of a cable exposure, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of the location and extent of exposure. Copies of all notices must be provided to the MMO, MCA, Trinity House and UK Hydrographic Office within five days.

Aids to navigation

8.—(1) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) The undertaker must during the period from the start of construction of the authorised scheme to completion of decommissioning seaward of MHWS keep Trinity House and the MMO informed of progress of the authorised scheme including the following—

- (a) notice of commencement of construction of the authorised scheme within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within five days of completion of construction of the authorised scheme.

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan approved pursuant to condition 13(1)(i) using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS notify Trinity House and the MMO of any failure of the aids to navigation and the timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the undertaker becoming aware of any such failure.

(5) In the event that the provisions of condition 7(11) are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

Colouring of structures

9.—(1) The undertaker must colour all structures yellow (colour code RAL 1023) from at least highest astronomical tide to a height directed by Trinity House, or must colour the structure as directed by Trinity House from time to time.

(2) Subject to sub-paragraph (1) above, unless the MMO otherwise directs, the undertaker must ensure that the remainder of the structures are painted submarine grey (colour code RAL 7035).

Aviation safety

10.—(1) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, at least 14 days prior to the commencement of the authorised scheme, in writing of the following information—

- (a) the date of the commencement of construction of the authorised scheme;
- (b) the date any wind turbine generators are brought into use;
- (c) the maximum height of any construction equipment to be used;
- (d) the maximum heights of any wind turbine generator and offshore accommodation platform to be constructed;
- (e) the latitude and longitude of each wind turbine generator and offshore accommodation platform to be constructed,

and the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph and of the completion of the construction of the authorised scheme. Copies of notifications must be provided to the MMO within five working days of the notification to the Defence Infrastructure Organisation Safeguarding.

Chemicals, drilling and debris

11.—(1) Unless otherwise agreed in writing by the MMO, the carriage and use of chemicals in the construction of the authorised scheme must comply with the International Convention for the Prevention of Pollution from Ships.

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31st January each year for the months July to December inclusive, and by 31st July each year for the months January to June inclusive.

(5) The undertaker must ensure that only inert material of natural origin, drilling mud and dredged material, produced during the drilling installation of or seabed preparation for foundations, and sandwave clearance works is disposed of within the disposal site reference(s) to be provided by the MMO within the extent of the Order limits seaward of MHWS. Any material of anthropogenic origin will be screened out and disposed of at an appropriate waste facility onshore.

(6) The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(7) In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker must report the loss to the District Marine Office within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it.

(8) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(9) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan approved under condition 13(1)(e)(i).

(10) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within five days of the undertaker

becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if reasonable to do so.

Force majeure

12.—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life and/or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

13.—(1) The licensed activities or any part of those activities must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO—

- (a) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, to be approved in writing by the MMO in consultation with Trinity House and the MCA which shows—
 - (i) the proposed location and choice of foundation of all wind turbine generators and the offshore accommodation platforms; and
 - (ii) the height to the tip of the vertical blade; height to the centreline of the generator shaft forming part of the hub;
 - (iii) rotor diameter and spacing of all wind turbine generators;
 - (iv) the length and arrangement of all cables comprising Work Nos. 1(b) and, to the extent that they are to be installed under this licence, Work No. 4;
 - (v) the dimensions of all gravity base structure foundations;
 - (vi) the dimensions of all pin pile jacket foundations;
 - (vii) the dimensions of all suction bucket jacket foundations;
 - (viii) the dimensions of all monopile foundations;
 - (ix) the proposed layout of all wind turbine generators (to be in accordance with the layout principles statement and which must accord with the recommendations for layout contained in MGN654 and its annexes) and the offshore accommodation platform including any exclusion zones identified under condition 13(1)(g)(iv);
 - (x) a plan showing the indicative layout of all wind turbine generators and the offshore accommodation platform including all exclusion zones (insofar as not shown in (ix) above) and showing the indicative programming of particular works as set out in the indicative programme to be provided under condition 13(1)(b)(iii); and
 - (xi) any exclusion zones/environmental micro-siting requirements;to ensure conformity with the description of Work Nos. 1, 2 4 and 8 and compliance with conditions 1 to 12 above.
- (b) A construction programme to include details of—
 - (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant delivery of materials and installation works;
 - (iii) an indicative written construction programme for all wind turbine generators, the offshore accommodation platform and cables comprised in the works at paragraph 3 of Part 1 (licensed marine activities) of this licence (insofar as not shown in paragraph (ii) above);

- (c) A monitoring plan (which accords with the in principle monitoring plan) to include details of proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with conditions 17, 18 and 19 to be submitted to the MMO in accordance with the following—
 - (i) at least four months prior to the first survey, detail of the pre-construction surveys and an outline of all proposed monitoring;
 - (ii) at least four months prior to construction, detail of construction monitoring;
 - (iii) at least four months prior to completion of construction, detail of post-construction (and operational) monitoring;
 unless otherwise agreed in writing with the MMO.
- (d) A construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—
 - (i) foundation installation methodology, including drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation works;
 - (ii) cable specification, installation and monitoring, in accordance with the outline cable specification and installation plan, to include—
 - (aa) technical specification of offshore cables below MHWS;
 - (bb) a detailed cable laying plan for the Order limits, incorporating a burial risk assessment encompassing the identification of any cable protection that exceeds 5% of navigable depth referenced to Chart Datum and, in the event that any area of cable protection exceeding 5% of navigable depth is identified, details of any steps (to be determined following consultation with the MCA and Trinity House) to be taken to ensure existing and future safe navigation is not compromised or such similar assessment to ascertain suitable burial depths and cable laying techniques, including cable protection; and
 - (cc) proposals for monitoring offshore cables and the status of cable protection during the operational lifetime of the authorised scheme which include a risk based approach to the management of unburied or shallow buried cables.
 - (iii) scour protection management and cable protection in accordance with the outline scour protection and cable protection management plan including details of the need, type, sources, quantity and installation methods for scour protection and cable protection, with details updated and resubmitted for approval if changes to it are proposed following cable laying operations;
 - (iv) main contractors;
 - (v) vessels and vessels transit corridors; and
 - (vi) associated and ancillary works.
- (e) A project environmental management plan covering the period of construction and operation to include details of—
 - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised scheme in relation to all activities carried out;
 - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;

- (iii) waste management and disposal arrangements;
 - (iv) the appointment and responsibilities of a fisheries liaison officer; and
 - (v) a fisheries liaison and coexistence plan to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to condition 7 and to address the interaction of the licensed activities with fishing activities.
- (f) In the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol in accordance with the outline marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, following current best practice as advised by the relevant statutory nature conservation body.
- (g) A written scheme of archaeological investigation in relation to the offshore Order limits seaward of mean high water, which must be submitted to the statutory historic body at least six months prior to commencement of the licensed activities and to the MMO at least four months prior to commencement of the licensed activities and which must accord with the outline written scheme of investigation (offshore archaeology) and industry good practice, in consultation with the statutory historic body to include—
- (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
 - (ii) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
 - (iii) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within four months of any survey being completed;
 - (iv) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones;
 - (v) monitoring of archaeological exclusion zones during and post construction, where required;
 - (vi) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the Archaeological Data Service, by submitting an OASIS (Online Access to the Index of archaeological investigationS') form with a digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO and Historic England that the OASIS form has been submitted to the Archaeological Data Service within two weeks of submission;
 - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme; and
 - (viii) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the offshore Order limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities.
- (h) An offshore operations and maintenance plan, in accordance with the outline offshore operations and maintenance plan, to be submitted to the MMO at least four months prior to commencement of operation of the licensed activities and to provide for review and resubmission every three years during the operational phase.
- (i) An aids to navigation management plan to be approved in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of condition 8 for the lifetime of the authorised scheme.
- (2) In the event that driven or part-driven pile foundations are proposed to be used, the hammer energy used to drive or part-drive the pile foundations must not exceed—
- (a) 6,600kJ in respect of monopile foundations; and
 - (b) 3,500kJ in respect of pin piles.
- (3) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a specific written scheme of archaeological investigation which is itself in accordance with the details set out in the

outline written scheme of investigation (offshore), and which has been submitted to and approved by the MMO in consultation with the statutory historic body.

14.—(1) Any archaeological reports produced in accordance with condition 13(1)(g)(iii) are to be approved by the statutory historic body.

(2) Each programme, statement, plan, protocol or scheme required to be approved under condition 13 must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(3) No licensed activity may commence until for that licensed activity the MMO has approved in writing any relevant programme, statement, plan, protocol or scheme required to be approved under condition 13.

(4) The MMO must determine an application for approval made under condition 13 within a period of four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(5) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 13, unless otherwise agreed in writing by the MMO.

Offshore safety management

15. No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations as appropriate to the authorised scheme contained within MGN654 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes.

Reporting of engaged agents, contractors and vessels

16.—(1) The undertaker must provide the following information to the MMO—

- (a) the name, company number (if applicable), address and function of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; and
- (b) each week during the construction of the authorised scheme a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the licensed activities, including the master’s name, vessel type, vessel IMO number and vessel owner or operating company.

(2) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Pre-construction monitoring and surveys

17.—(1) The undertaker must, in discharging condition 13(1)(c), submit details (which accord with the in principle monitoring plan) for written approval by the MMO in consultation with the relevant statutory bodies of proposed pre-construction surveys, including methodologies (including appropriate buffers, where relevant) and timings, and a proposed format and content for a pre-construction baseline report; and

- (a) the survey proposals must specify each survey’s objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-

construction position, with any limitations, and must make clear what post-construction comparison is intended and the justification for this being required.

(2) The pre-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake—

- (a) an appropriate survey to determine the location, extent and composition of any benthic habitats of conservation, ecological and/or economic importance constituting Annex 1 reef habitats in the parts of the Order limits in which it is proposed to carry out construction works;
- (b) a swath-bathymetry survey to IHO Order 1a standard that meets the requirements MGN654 and its annexes, and side scan sonar, of the area(s) within the Order limits in which it is proposed to carry out construction works;
- (c) any marine mammal monitoring required by the monitoring plan submitted in accordance with condition 13(1)(c); and
- (d) any ornithological monitoring required by the monitoring plan submitted in accordance with condition 13(1)(c).

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation body.

Construction monitoring

18.—(1) The undertaker must, in discharging condition 13(1)(c), submit details (which accord with the in principle monitoring plan) for approval by the MMO in consultation with the relevant statutory nature conservation body of any proposed monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The monitoring proposals must specify each survey's objectives.

(2) In the event that driven or part-driven pile foundations are proposed, such monitoring must include measurements of noise generated by the installation of the first four piled foundations of each piled foundation type to be installed collectively under this licence and under licence 2 (transmission), unless otherwise agreed in writing by the MMO.

(3) The results of the initial noise measurements monitored in accordance with sub-paragraph (2) must be provided to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type (unless otherwise agreed with the MMO). The assessment of this report by the MMO will determine whether any further noise monitoring is required. If, in the opinion of the MMO in consultation with the statutory nature conservation body, the assessment shows impacts significantly in excess of those assessed in the environmental statement or failures in mitigation, all piling activity must cease until an update to the marine mammal mitigation protocol and further monitoring requirements have been agreed.

(4) The undertaker must carry out the monitoring approved under sub-paragraph (1), including any further noise monitoring required in writing by the MMO, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation body.

(5) Construction monitoring must include traffic monitoring including the provision of reports on the results of that monitoring periodically as requested by the MMO in consultation with Trinity House and the MCA.

Post construction

19.—(1) The undertaker must, in discharging condition 13(1)(c), submit details (which accord with the in principle monitoring plan) for approval by the MMO in consultation with relevant statutory bodies of proposed post-construction surveys, including methodologies (including appropriate buffers, where relevant) and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must specify each survey's objectives and

explain how it will assist in either informing a useful and valid comparison with the pre-construction position or will enable the validation or otherwise of key predictions in the environmental statement.

(2) The post-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake—

- (a) an appropriate survey to determine any change in the location, extent and composition of any benthic habitats of conservation, ecological and/or economic importance constituting Annex 1 reef habitats identified in the pre-construction survey in the parts of the Order limits in which construction works were carried out. The survey design must be informed by the results of the pre-construction benthic survey;
- (b) within twelve months of completion of the licensed activities, a full sea floor coverage swath-bathymetry survey that meets the requirements of MGN654 and its annexes, and side scan sonar, of the area(s) within the Order limits in which construction works were carried out to assess any changes in bedform topography and such further monitoring or assessment as may be agreed to ensure that cables have been buried or protected;
- (c) any marine mammal monitoring required by the monitoring plan submitted in accordance with condition 13(1)(c);
- (d) any ornithological monitoring required by the monitoring plan submitted in accordance with condition 13(1)(c); and
- (e) post-construction traffic monitoring including the provision of reports on the results of that monitoring periodically as requested by the MMO in consultation with Trinity House and the MCA.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation body.

(4) Following installation of cables, the cable monitoring plan required under condition 13(1)(d)(ii)(cc) must be updated with the results of the post installation surveys. The plan must be implemented during the operational lifetime of the project and reviewed as specified within the plan, following cable burial surveys, or as instructed by the MMO.

Reporting of impact pile driving

20.—(1) Only when driven or part-driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry—

- (a) prior to the commencement of the licenced activities, information on the expected location, start and end dates of impact pile driving to satisfy the Marine Noise Registry's Forward Look requirements;
- (b) at six month intervals following the commencement of pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements; and
- (c) within 12 weeks of completion of impact pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements

(2) The undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to paragraph (1) above within 7 days of the submission.

(3) For the purpose of this condition—

- (a) "*Marine Noise Registry*" means the database developed and maintained by JNCC on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas;

- (b) “*Forward Look*” and “*Close Out*” requirements are as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) or any updated information document.

Deployment of cable protection

21. Any cable protection authorised under this licence must be deployed within 15 years from the date of the grant of the Order unless otherwise agreed by the MMO in writing.

Southern North Sea Special Area of Conservation Site Integrity Plan (Piling)

22.—(1) No piling activities can begin until a Site Integrity Plan (SIP), which accords with the principles set out in the in principle Southern North Sea SAC Site Integrity Plan, has been submitted to, and approved in writing, by the MMO in consultation with the relevant statutory nature conservation body.

(2) The SIP submitted for approval must contain a description of the conservation objectives for the Southern North Sea Special Area of Conservation (SNS SAC) as well as any relevant management measures and it must set out the key statutory nature conservation body advice on activities within the SNS SAC relating to piling as set out within the JNCC Guidance and how this has been considered in the context of the authorised scheme.

(3) The SIP must be submitted to the MMO no later than four months prior to the commencement of piling activities.

(4) In approving the SIP the MMO must be satisfied that the authorised scheme at the pre-construction stage, in-combination with other plans and projects, is in line with the JNCC Guidance.

(5) The approved SIP may be amended with the prior written approval of the MMO, in consultation with the relevant statutory nature conservation body, where the MMO remains satisfied that the authorised scheme, in-combination with other plans or projects at the pre-construction stage, is in line with the JNCC Guidance.

Completion of construction

23.—(1) The undertaker must submit a close out report to the MMO and the relevant statutory nature conservation body within three months of the date of completion of construction. The close out report must confirm the date of completion of construction and must include the following details—

- (a) the final number of installed wind turbine generators; and
- (b) the installed wind turbine generator parameters relevant for ornithological collision risk modelling.

(2) Following completion of construction, no further construction activities can be undertaken under this licence.

SCHEDULE 12

Article 34

Deemed licence under the 2009 Act – offshore transmission assets

PART 1

Licensed marine activities

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“the 2017 Offshore Regulations” means the Conservation of Offshore Marine Habitats and Species Regulations 2017;

“the 2017 Regulations” means the Conservation of Habitats and Species Regulations 2017;

“authorised deposits” means the substances and articles specified in paragraph 4 of Part 1 of this licence;

“authorised scheme” means Work Nos. 1 to 8 and 11 described in paragraph 3 of Part 1 of this licence or any part of that work;

“buoy” means any floating device used for navigational purposes or measurement purposes, including LiDAR buoys, wave buoys and guard buoys;

“cable crossings” means the crossing of existing sub-sea cables or pipelines or other existing infrastructure by cable circuits authorised by this Order together with physical protection measures including cable protection;

“cable protection” means measures to protect cables from physical damage including the use of bagged solutions filled with grout or other materials, protective aprons or coverings, mattresses, flow energy dissipation devices or rock and gravel burial;

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

“commence” means the first carrying out of any licensed marine activities authorised by this licence, save for operations consisting of offshore preparation works or pre-construction monitoring surveys approved under this licence and the words “commencement” and “commenced” must be construed accordingly;

“condition” means a condition in Part 2 of this licence;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands, B75 7RL and any successor body to its functions;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of Part 4 (marine licensing) of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order under article 42;

“European offshore marine site” has the meaning given in regulation 18 of the 2017 Offshore Regulations;

“European site” has the meaning given in regulation 27 of the 2017 Offshore Regulations;

“gravity base structure” means a structure principally of steel, concrete, or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or additional skirts and associated equipment including scour protection, J-tubes, corrosion protection systems and access platforms and equipment;

“Historic England” means the Historic Buildings and Monuments Commission for England;

“in principle monitoring plan” means the document certified as the in principle monitoring plan by the Secretary of State for the purposes of the Order under article 42;

“in principle Southern North Sea SAC Site Integrity Plan” means the document certified as the in principle Southern North Sea SAC Site Integrity Plan by the Secretary of State for the purposes of the Order under article 42;

“interlink cable” means the cables comprised within Work No. 4 that link the offshore transformer substations to each other and to the offshore accommodation platform;

“intertidal area” means the area between MHWS and MLWS;

“JNCC Guidance” means the statutory nature conservation body 'Guidance for assessing the significance of noise disturbance against Conservation Objectives of harbour porpoise SACs' Joint Nature Conservation Committee Report No.654, May 2020 published in June 2020 as amended, updated or superseded from time to time;

“LAT” means lowest astronomical tide;

“layout principles statement” means the document certified as the layout principles statement by the Secretary of State for the purposes of the Order under article 42;

“licence 1 (generation)” means the licence set out in Schedule 11 (deemed licence under the 2009 Act – generation assets);

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace (including replenishment of cable protection), but does not include the removal, reconstruction or replacement of foundations associated with the offshore works, to the extent assessed in the environmental statement; and “maintenance” must be construed accordingly;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“MCA” means the Maritime and Coastguard Agency;

“monopile foundation” means a steel pile, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platforms and equipment;

“offshore accommodation platform” means a structure attached to the seabed by means of a foundation, with one or more decks and a helicopter platform (including bird deterrents), containing housing accommodation, storage, workshop, auxiliary equipment, and facilities for operating, maintaining and controlling the wind turbine generators and offshore electrical installations;

“offshore electrical installations” means the small offshore transformer substations, the large offshore transformer substations, and the offshore reactive compensation platforms forming part of the authorised scheme;

“offshore Order limits” means the limits shown on the works plans within which the authorised scheme may be carried out;

“offshore preparation works” means surveys and monitoring seaward of MHWS undertaken prior to the commencement of construction to prepare for construction;

“offshore reactive compensation platform” means a structure attached to the seabed by means of a foundation, with one or more decks and a helicopter platform (including bird deterrents) housing electrical reactors and switchgear for the purpose of the efficient transfer of power in the course of HVAC transmission by providing reactive compensation;

“offshore transformer substation” means a structure attached to the seabed by means of a foundation, with one or more decks and a helicopter platform (including bird deterrents), containing—

- (a) electrical equipment required to switch, transform, convert electricity generated at the wind turbine generators to a higher voltage and provide reactive power compensation; and
- (b) housing accommodation, storage, workshop auxiliary equipment, radar and facilities for operating, maintaining and controlling the substation or wind turbine generators;

“the Order” means the Outer Dowsing Offshore Wind Farm Order 202[*];

“outline cable specification and installation plan” means the document certified as the outline cable specification and installation plan by the Secretary of State for the purposes of the Order under article 42;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of the Order under article 42;

“outline marine mammal mitigation protocol” means the document certified as the outline marine mammal mitigation protocol by the Secretary of State for the purposes of this Order under article 42;

“outline written scheme of investigation (offshore archaeology)” means the document certified as the outline written scheme of investigation (offshore archaeology) by the Secretary of State for the purposes of the Order under article 42;

“pin piles” means steel cylindrical piles driven and/or drilled into the seabed to secure steel jacket foundations;

“pin pile jacket foundation” means a jacket/lattice-type structure constructed of steel which is fixed to the seabed at three or more points with steel pin piles and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“relevant site” means a European offshore marine site or a European site; “SAC” means special area of conservation;

“statutory historic body” means Historic England or its successor in function;

“statutory nature conservation body” means the appropriate nature conservation body as defined in regulation 5 of the 2017 Regulations;

“suction bucket” means large diameter steel cylindrical shells which penetrate the seabed assisted by a hydrostatic pressure differential for securing steel jacket foundations;

“suction bucket jacket foundation” means a jacket/lattice-type structure constructed of steel which is fixed to the seabed at three or more points with steel suction buckets and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means GT R4 Limited (company number 13281221);

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN; and

“works plans” means the plans certified as the works plans by the Secretary of State for the purposes of the Order.

(2) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT);
- (b) all coordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

- (a) Marine Management Organisation
 - Marine Licensing Team
 - Lancaster House Hampshire Court
 - Newcastle Business Park
 - Newcastle upon Tyne
 - NE4 7YH

- Tel: 0300 123 1032;
- (b) Marine Management Organisation (local office)
Address: [TBC]
Tel: [TBC];
- (c) Trinity House
Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;
- (d) The United Kingdom Hydrographic Office
Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;
- (e) Maritime and Coastguard Agency
Navigation Safety Branch
Bay 2/20, Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 020 3817 2426/2433n;
- (f) Natural England
Area 1C, Nobel House
17 Smith Square
London
SW1P 2AL
Tel: 0300 060 4911a;
- (g) Historic England
The Foundry
82 Granville Street
Birmingham
B1 2LH
Tel: 0121 625 6888

2. Subject to the licence conditions at Part 2, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act—

- (a) the deposit at sea of the substances and articles specified in paragraph 4 below;
- (b) the construction of works in or over the sea or on or under the sea bed;
- (c) dredging for the purposes of seabed preparation for foundation works and cable laying preparation works;
- (d) debris clearance works;
- (e) boulder clearance works either by displacement ploughing or subsea grab technique or other equivalent method;

- (f) the removal of out of service cables;
- (g) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation;
- (h) removal of static fishing gear; and
- (i) the disposal of up to 11,443,620 cubic metres of inert material of natural origin and/or dredged material within the offshore Order limits produced during construction drilling or seabed preparation for foundation works, sandwave clearance, boulder clearance works and excavation of trenchless technique exit pits at disposal site reference(s) to be provided by the MMO within the extent of the Order limits seaward of MHWS (some of which may alternatively be disposed under licence 1 (generation)).

3. Such activities are authorised in relation to the construction, maintenance and operation of—

Work No. 2— up to one offshore accommodation platform fixed to the seabed by either monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations (which may alternatively be constructed under licence 1 (generation));

Work No. 3—

- (a) up to four small offshore transformer substations each fixed to the seabed by monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations; or
- (b) up to two large offshore transformer substations each fixed to the seabed by monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations;

Work No. 4— a network of interlink cables between the offshore transformer substations comprised within Work No. 3 and between the offshore transformer substations and the offshore accommodation platform comprised within Work No. 2, for the transmission of electricity and electronic communications, including one or more cable crossings (which may alternatively be constructed under licence 1 (generation), in whole or in part);

Work No. 5— up to four cable circuits between Work No.3 and Work No.7, and between Work No.7 and Work No.11 or between Work No.3 and Work No.11 consisting of offshore export cables along routes within the Order limits seaward of MLWS including one or more cable crossings;

Work No. 6— up to six temporary trenchless technique exit pits and associated cofferdams;

Work No. 7— up to two offshore reactive compensation platforms fixed to the seabed by monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations;

Work No. 8— a temporary work area associated with Works Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11 for vessels to carry out anchoring and positioning, and for the wet storage of construction materials;

Work No. 11— landfall connection works consisting of up to four underground cable circuits and up to six associated cable ducts to the onshore connection works comprised within Work No. 12;

In connection with such Work Nos. 2 to 8 and 11 and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection measures such as but not limited to the placement of rock, split pipe system, and/or mattresses;
- (c) cable crossings;
- (d) dredging;

- (e) the removal of material from the seabed required for the construction of Work Nos. 2 to 8 and 11 and the disposal of inert material of natural origin and dredged material within the Order limits produced during construction drilling, seabed preparation for foundation works, cable installation preparation works (such as sandwave clearance and boulder clearance) and excavation of trenchless technique exit pits; and
- (f) removal of static fishing equipment.

In connection with such Work Nos. 2 to 8 and 11, ancillary works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating or anchoring vessels in the construction and/or maintenance of the authorised development; and
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works.

4. The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete and grout;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works, cable preparation works and sandwave clearance works and excavation of trenchless technique exit pits;
- (g) weights used for the calibration of vessels, consisting of a hessian sack, metal shackles or chains; and
- (h) marine coatings, other chemicals and timber.

5. The grid coordinates for the authorised scheme are specified below—

<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>
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6. This licence remains in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 (approval of decommissioning programmes) of the 2004 Act, including any modification to the programme under section 108 (reviews and revisions of decommissioning programmes) of the 2004 Act, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of section 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 6 (benefit of the Order).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

9. Any amendments to the details, plan or scheme must be in accordance with the principles and assessments set out in the environmental statement, and approval for an amendment may be given only where it has been demonstrated to the satisfaction of the MMO that the amendment is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

PART 2

Conditions

Design parameters

1.—(1) The total number of offshore accommodation platforms forming part of the authorised scheme and the authorised scheme in licence 1 (generation) taken together must not exceed one (whether constructed under this licence or licence 1 (generation)).

(2) The total number of offshore electrical installations must not exceed six, consisting of a combination of no more than—

(a) four small offshore transformer substations or two large offshore transformer substations; and

(b) two offshore reactive compensation platforms.

(3) The dimensions of any small offshore transformer substation comprised within Work No. 3(a) (including auxiliary structures, such as a helipad, crane, lightning protection, but excluding masts, radar and antennae) forming part of the authorised project must not exceed—

(a) 90 metres in height when measured from LAT;

(b) 90 metres in length; and

(c) 90 metres in width.

(4) The dimensions of any large offshore transformer substation comprised within Work No. 3(b) (including auxiliary structures, such as a helipad, crane, lightning protection, but excluding masts, radar and antennae) forming part of the authorised project must not exceed—

(a) 100 metres in height when measured from LAT;

(b) 160 metres in length; and

(c) 110 metres in width.

(5) The dimensions of any offshore reactive compensation platform (including auxiliary structures, such as a helipad, crane, lightning protection, but excluding masts, radar and antennae) forming part of the authorised project must not exceed—

(a) 90 metres in height when measured from LAT;

(b) 90 metres in length; and

(c) 90 metres in width.

(6) The dimensions of the offshore accommodation platform forming part of the authorised project must not exceed—

(a) 80.2 metres in height when measured from LAT;

(b) 84 metres in length; and

(c) 84 metres in width.

2.—(1) Offshore accommodation platform foundation structures forming part of the authorised project must be one of either monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations.

(2) Offshore electrical installation foundation structures forming part of the authorised project must be one of either monopile, gravity base structure, pin pile jacket or suction bucket jacket foundations.

- (3) In respect of an offshore electrical installation and offshore accommodation platform—
- (a) no monopile foundation may have a diameter greater than 14 metres;
 - (b) no gravity base structure foundation may exceed, at the level of the seabed—
 - (i) a length of 72 metres; or
 - (ii) a width of 36 metres;
 - (c) no pin pile jacket foundation forming part of the authorised project may—
 - (i) have a pin pile diameter of greater than five meters; or
 - (ii) employ more than 24 pin piles per jacket foundation;
 - (d) no suction bucket jacket foundation forming part of the authorised project may—
 - (i) have a suction bucket diameter of greater than 20 meters; or
 - (ii) employ more than eight suction buckets per jacket foundation;
- (4) The total seabed footprint area for offshore accommodation platform foundations must not exceed—
- (a) 2,592 square metres excluding scour protection; and
 - (b) 19,600 square metres including scour protection.
- (5) The total seabed footprint area for offshore electrical installation foundations must not exceed—
- (a) 15,552 square metres excluding scour protection; and
 - (b) 117,600 square metres including scour protection.

3.—(1) The total length of the cables forming part of the authorised scheme and the authorised scheme in licence 1 (generation) and the volume and area of their cable protection must not exceed the following (whether installed under this licence or licence 1 (generation))—

<i>Work</i>	<i>Length</i>	<i>Area of cable protection</i>	<i>Volume of cable protection</i>
Work No. 1(b) (array cable)	351km	1,404,000m ²	1,579,500m ³
Work No. 4 (interlink cables)	123km	495,000m ²	556,875m ³
Work Nos. 5 and 11 (offshore export cables)	514.8km	2,059,200m ²	2,316,600m ³

- (2) The total number of the cable crossings must not exceed—
- (a) 20, in respect of the array cables comprised within Work No. 1(b);
 - (b) 12, in respect of the interlink cables comprised within Work No. 4; and
 - (c) 20, in respect of the offshore export cables comprised within Work No. 5
- unless otherwise agreed with the MMO.

Maintenance of the authorised scheme

4.—(1) The undertaker may at any time maintain the authorised scheme, except to the extent that this licence or an agreement made under this licence provides otherwise.

(2) No maintenance works whose likely effects are not assessed in the environmental statement may be carried out, unless otherwise approved by the MMO.

(3) Maintenance works include but are not limited to—

- (a) major offshore electrical installation component or offshore accommodation platform replacement;
- (b) painting and applying other coatings to offshore electrical installations or offshore accommodation platform;
- (c) bird waste and marine growth removal;
- (d) cable remedial burial;
- (e) cable repairs and replacement;
- (f) cable protection replenishment;
- (g) access ladder and boat landing replacement;
- (h) replacement of offshore electrical installation and accommodation platform anodes; and
- (i) J-tube repair/replacement.

(4) Where the MMO's approval is required under paragraph (2), approval may be given only where it has been demonstrated to the satisfaction of the MMO that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Vessels under the undertaker's control

5.—(1) The undertaker must issue to operators of vessels under its control operating within the Order limits a code of conduct to prevent collision risk or injury to marine mammals.

(2) The undertaker must ensure appropriate co-ordination of vessels within its control operating within the Order limits so as to reduce collision risk to other vessels including advisory safe passing distances for vessels.

Extension of time periods

6. Any time period given in this licence given to either the undertaker or the MMO may be extended with the agreement of the other party in writing such agreement not to be unreasonably withheld or delayed.

Notification and Inspection

7.—(1) The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with condition 16 and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 16;
- (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must confirm receipt of this licence in writing to the MMO.

(2) Only those persons and vessels notified to the MMO in accordance with condition 16 are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

- (a) the undertaker's registered address;
- (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities.

(7) The undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part—

- (a) at least 14 days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and
- (b) as soon as reasonably practicable and no later than 24 hours after completion of construction of all offshore activities.

Confirmation of notification must be provided to the MMO within five days.

(8) A notice to mariners must be issued at least 14 days prior to the commencement of the licensed activities or any part of them advising of the start date of Work Nos. 3, 5, 6, 7 and 11, and to the extent that they are carried out under this licence, Work Nos. 2, 4 and 8, and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO, MCA and UK Hydrographic Office within five days.

(9) The notices to mariners must be updated and reissued at regular intervals during construction activities and at least five days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under condition 13(1)(b). Copies of all notices must be provided to the MMO and UK Hydrographic Office within five days.

(10) The undertaker must notify the UK Hydrographic Office of the commencement (14 days prior), progress and completion of construction (within 14 days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO within five days.

(11) In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify MMO, MCA, Trinity House, Kingfisher Information Service and the UK Hydrographic Office.

(12) In case of exposure of cables on or above the seabed, the undertaker must, within three days following identification of a cable exposure, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of the location and extent of exposure. Copies of all notices must be provided to the MMO, MCA, Trinity House and UK Hydrographic Office within five days.

Aids to navigation

8.—(1) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) The undertaker must during the period from the start of construction of the authorised scheme to completion of decommissioning seaward of MHWS keep Trinity House and the MMO informed of progress of the authorised scheme including the following—

- (a) notice of commencement of construction of the authorised scheme within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and

(c) notice within five days of completion of construction of the authorised scheme.

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan approved pursuant to condition 13(1)(i) using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS notify Trinity House and the MMO of any failure of the aids to navigation and the timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the undertaker becoming aware of any such failure.

(5) In the event that the provisions of condition 7(11) are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

Colouring of structures

9.—(1) The undertaker must colour all structures yellow (colour code RAL 1023) from at least highest astronomical tide to a height directed by Trinity House, or must colour the structure as directed by Trinity House from time to time.

(2) Subject to sub-paragraph (1) above, unless the MMO otherwise directs, the undertaker must ensure that the remainder of the structures are painted submarine grey (colour code RAL 7035).

Aviation safety

10.—(1) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, at least 14 days prior to the commencement of the authorised scheme, in writing of the following information—

- (a) the date of the commencement of construction of the authorised scheme;
- (b) the date any offshore electrical installations are brought into use;
- (c) the maximum height of any construction equipment to be used;
- (d) the maximum heights of any offshore electrical installations and offshore accommodation platform to be constructed;
- (e) the latitude and longitude of each offshore electrical installation and offshore accommodation platform to be constructed,

and the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph and of the completion of the construction of the authorised scheme. Copies of notifications must be provided to the MMO within five working days of the notification to the Defence Infrastructure Organisation Safeguarding.

Chemicals, drilling and debris

11.—(1) Unless otherwise agreed in writing by the MMO, the carriage and use of chemicals in the construction of the authorised scheme must comply with the International Convention for the Prevention of Pollution from Ships.

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31st January each year for the months July to December inclusive, and by 31st July each year for the months January to June inclusive.

(5) The undertaker must ensure that only inert material of natural origin, drilling mud and dredged material, produced during the drilling installation of or seabed preparation for foundations, sandwave clearance works and excavation of trenchless technique exit pits is disposed of within the disposal site reference(s) to be provided by the MMO within the extent of the Order limits seaward of MHWS. Any material of anthropogenic origin will be screened out and disposed of at an appropriate waste facility onshore.

(6) The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(7) In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker must report the loss to the District Marine Office within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it.

(8) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(9) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan approved under condition 13(1)(e)(i).

(10) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within five days of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if reasonable to do so.

Force majeure

12.—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life and/or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

13.—(1) The licensed activities or any part of those activities must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO—

- (a) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, to be approved in writing by the MMO in consultation with Trinity House and the MCA which shows—
 - (i) the proposed location and choice of foundation of all offshore electrical installations and the offshore accommodation platform; and
 - (ii) the length and arrangement of all cables comprising Work Nos. 5 and 11 and, to the extent that they are to be installed under this licence, Work No. 4;
 - (iii) the dimensions of all gravity base structure foundations;
 - (iv) the dimensions of all pin pile jacket foundations;
 - (v) the dimensions of all suction bucket jacket foundations;
 - (vi) the dimensions of all monopile foundations;
 - (vii) the proposed layout of all offshore electrical installations and the offshore accommodation platform including any exclusion zones identified under condition 13(1)(g)(iv);

- (viii) a plan showing the indicative layout of all offshore electrical installations and the offshore accommodation platform including all exclusion zones (insofar as not shown in (ix) above) and showing the indicative programming of particular works as set out in the indicative programme to be provided under condition 13(1)(b)(iii); and
 - (ix) any exclusion zones/environmental micro-siting requirements;
- to ensure conformity with the description of Work Nos. 2 to 8 and 11 and compliance with conditions 1 to 12 above.
- (b) A construction programme to include details of—
 - (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant delivery of materials and installation works;
 - (iii) an indicative written construction programme for all offshore electrical installations, the offshore accommodation platform and cables comprised in the works at paragraph 3 of Part 1 (licensed marine activities) of this licence (insofar as not shown in paragraph (ii) above);
 - (c) A monitoring plan (which accords with the in principle monitoring plan) to include details of proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with conditions 17, 18 and 19 to be submitted to the MMO in accordance with the following—
 - (i) at least four months prior to the first survey, detail of the pre-construction surveys and an outline of all proposed monitoring;
 - (ii) at least four months prior to construction, detail of construction monitoring;
 - (iii) at least four months prior to completion of construction, detail of post-construction (and operational) monitoring;

unless otherwise agreed in writing with the MMO.
 - (d) A construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—
 - (i) foundation installation methodology, including drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation works;
 - (ii) cable specification, installation and monitoring, in accordance with the outline cable specification and installation plan, to include—
 - (aa) technical specification of offshore cables below MHWS;
 - (bb) a detailed cable laying plan for the Order limits, incorporating a burial risk assessment encompassing the identification of any cable protection that exceeds 5% of navigable depth referenced to Chart Datum and, in the event that any area of cable protection exceeding 5% of navigable depth is identified, details of any steps (to be determined following consultation with the MCA and Trinity House) to be taken to ensure existing and future safe navigation is not compromised or such similar assessment to ascertain suitable burial depths and cable laying techniques, including cable protection; and
 - (cc) proposals for monitoring offshore cables and the status of cable protection during the operational lifetime of the authorised scheme which include a risk based approach to the management of unburied or shallow buried cables.

- (iii) scour protection management and cable protection in accordance with the outline scour protection and cable protection management plan including details of the need, type, sources, quantity and installation methods for scour protection and cable protection, with details updated and resubmitted for approval if changes to it are proposed following cable laying operations;
 - (iv) main contractors;
 - (v) vessels and vessels transit corridors; and
 - (vi) associated and ancillary works.
- (e) A project environmental management plan covering the period of construction and operation to include details of—
 - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised scheme in relation to all activities carried out;
 - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) waste management and disposal arrangements;
 - (iv) the appointment and responsibilities of a fisheries liaison officer; and
 - (v) a fisheries liaison and coexistence plan to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to condition 7 and to address the interaction of the licensed activities with fishing activities.
- (f) In the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol in accordance with the outline marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, following current best practice as advised by the relevant statutory nature conservation body.
- (g) A written scheme of archaeological investigation in relation to the offshore Order limits seaward of mean high water, which must be submitted to the statutory historic body at least six months prior to commencement of the licensed activities and to the MMO at least four months prior to commencement of the licensed activities and which must accord with the outline written scheme of investigation (offshore archaeology) and industry good practice, in consultation with the statutory historic body (and, if relevant, Lincolnshire County Council) to include—
 - (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
 - (ii) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
 - (iii) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within four months of any survey being completed;
 - (iv) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones;
 - (v) monitoring of archaeological exclusion zones during and post construction, where required;
 - (vi) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the Archaeological Data Service, by submitting an OASIS (Online Access to the Index of archaeological investigationS') form with a digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO and Historic England that the OASIS form has been submitted to the Archaeological Data Service within two weeks of submission;
 - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme; and

- (viii) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the offshore Order limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities.
 - (h) An offshore operations and maintenance plan, in accordance with the outline offshore operations and maintenance plan, to be submitted to the MMO at least four months prior to commencement of operation of the licensed activities and to provide for review and resubmission every three years during the operational phase.
 - (i) An aids to navigation management plan to be approved in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of condition 8 for the lifetime of the authorised scheme.
- (2) In the event that driven or part-driven pile foundations are proposed to be used, the hammer energy used to drive or part-drive the pile foundations must not exceed—
- (a) 6,600kJ in respect of monopile foundations; and
 - (b) 3,500kJ in respect of pin piles.
- (3) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a specific written scheme of archaeological investigation which is itself in accordance with the details set out in the outline written scheme of investigation (offshore), and which has been submitted to and approved by the MMO in consultation with the statutory historic body.

14.—(1) Any archaeological reports produced in accordance with condition 13(1)(g)(iii) are to be approved by the statutory historic body.

(2) Each programme, statement, plan, protocol or scheme required to be approved under condition 13 must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(3) No licensed activity may commence until for that licensed activity the MMO has approved in writing any relevant programme, statement, plan, protocol or scheme required to be approved under condition 13.

(4) The MMO must determine an application for approval made under condition 13 within a period of four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(5) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 13, unless otherwise agreed in writing by the MMO.

Offshore safety management

15. No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations as appropriate to the authorised scheme contained within MGN654 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes.

Reporting of engaged agents, contractors and vessels

16.—(1) The undertaker must provide the following information to the MMO—

- (a) the name, company number (if applicable), address and function of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; and
- (b) each week during the construction of the authorised scheme a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the licensed activities,

including the master's name, vessel type, vessel IMO number and vessel owner or operating company.

(2) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Pre-construction monitoring and surveys

17.—(1) The undertaker must, in discharging condition 13(1)(c), submit details (which accord with the in principle monitoring plan) for written approval by the MMO in consultation with the relevant statutory bodies of proposed pre-construction surveys, including methodologies (including appropriate buffers, where relevant) and timings, and a proposed format and content for a pre-construction baseline report; and

- (a) the survey proposals must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post-construction comparison is intended and the justification for this being required.

(2) The pre-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake—

- (a) an appropriate survey to determine the location, extent and composition of any benthic habitats of conservation, ecological and/or economic importance constituting Annex 1 reef habitats in the parts of the Order limits in which it is proposed to carry out construction works;
- (b) a swath-bathymetry survey to IHO Order 1a standard that meets the requirements MGN654 and its annexes, and side scan sonar, of the area(s) within the Order limits in which it is proposed to carry out construction works;
- (c) any marine mammal monitoring required by the monitoring plan submitted in accordance with condition 13(1)(c); and
- (d) any ornithological monitoring required by the monitoring plan submitted in accordance with condition 13(1)(c).

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation body.

Construction monitoring

18.—(1) The undertaker must, in discharging condition 13(1)(c), submit details (which accord with the in principle monitoring plan) for approval by the MMO in consultation with the relevant statutory nature conservation body of any proposed monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The monitoring proposals must specify each survey's objectives.

(2) In the event that driven or part-driven pile foundations are proposed, such monitoring must include measurements of noise generated by the installation of the first four piled foundations of each piled foundation type to be installed collectively under this licence and under licence 1 (generation), unless otherwise agreed in writing by the MMO.

(3) The results of the initial noise measurements monitored in accordance with sub-paragraph (2) must be provided to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type (unless otherwise agreed with the MMO). The assessment of this report by the MMO will determine whether any further noise monitoring is required. If, in the opinion of the MMO in consultation with the statutory nature conservation

body, the assessment shows impacts significantly in excess of those assessed in the environmental statement or failures in mitigation, all piling activity must cease until an update to the marine mammal mitigation protocol and further monitoring requirements have been agreed.

(4) The undertaker must carry out the monitoring approved under sub-paragraph (1), including any further noise monitoring required in writing by the MMO, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation body.

(5) Construction monitoring must include traffic monitoring including the provision of reports on the results of that monitoring periodically as requested by the MMO in consultation with Trinity House and the MCA.

Post construction

19.—(1) The undertaker must, in discharging condition 13(1)(c), submit details (which accord with the in principle monitoring plan) for approval by the MMO in consultation with relevant statutory bodies of proposed post-construction surveys, including methodologies (including appropriate buffers, where relevant) and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position or will enable the validation or otherwise of key predictions in the environmental statement.

(2) The post-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake—

- (a) an appropriate survey to determine any change in the location, extent and composition of any benthic habitats of conservation, ecological and/or economic importance constituting Annex 1 reef habitats identified in the pre-construction survey in the parts of the Order limits in which construction works were carried out. The survey design must be informed by the results of the pre-construction benthic survey;
- (b) within twelve months of completion of the licensed activities, a full sea floor coverage swath-bathymetry survey that meets the requirements of MGN654 and its annexes, and side scan sonar, of the area(s) within the Order limits in which construction works were carried out to assess any changes in bedform topography and such further monitoring or assessment as may be agreed to ensure that cables have been buried or protected;
- (c) any marine mammal monitoring required by the monitoring plan submitted in accordance with condition 13(1)(c);
- (d) any ornithological monitoring required by the monitoring plan submitted in accordance with condition 13(1)(c); and
- (e) post-construction traffic monitoring, including the provision of reports on the results of that monitoring periodically as requested by the MMO in consultation with Trinity House and the MCA.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation body.

(4) Following installation of cables, the cable monitoring plan required under condition 13(1)(d)(ii)(cc) must be updated with the results of the post installation surveys. The plan must be implemented during the operational lifetime of the project and reviewed as specified within the plan, following cable burial surveys, or as instructed by the MMO.

Reporting of impact pile driving

20.—(1) Only when driven or part-driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry—

- (a) prior to the commencement of the licenced activities, information on the expected location, start and end dates of impact pile driving to satisfy the Marine Noise Registry's Forward Look requirements;
 - (b) at six month intervals following the commencement of pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements; and
 - (c) within 12 weeks of completion of impact pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements
- (2) The undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to paragraph (1) above within 7 days of the submission.
- (3) For the purpose of this condition—
- (a) “*Marine Noise Registry*” means the database developed and maintained by JNCC on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas;
 - (b) “*Forward Look*” and “*Close Out*” requirements are as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) or any updated information document.

Deployment of cable protection

21. Any cable protection authorised under this licence must be deployed within 15 years from the date of the grant of the Order unless otherwise agreed by the MMO in writing.

Southern North Sea Special Area of Conservation Site Integrity Plan (Piling)

22.—(1) No piling activities can begin until a Site Integrity Plan (SIP), which accords with the principles set out in the in principle Southern North Sea SAC Site Integrity Plan, has been submitted to, and approved in writing, by the MMO in consultation with the relevant statutory nature conservation body.

(2) The SIP submitted for approval must contain a description of the conservation objectives for the Southern North Sea Special Area of Conservation (SNS SAC) as well as any relevant management measures and it must set out the key statutory nature conservation body advice on activities within the SNS SAC relating to piling as set out within the JNCC Guidance and how this has been considered in the context of the authorised scheme.

(3) The SIP must be submitted to the MMO no later than four months prior to the commencement of piling activities.

(4) In approving the SIP the MMO must be satisfied that the authorised scheme at the pre-construction stage, in-combination with other plans and projects, is in line with the JNCC Guidance.

(5) The approved SIP may be amended with the prior written approval of the MMO, in consultation with the relevant statutory nature conservation body, where the MMO remains satisfied that the authorised scheme, in-combination with other plans or projects at the pre-construction stage, is in line with the JNCC Guidance.

SCHEDULE 13

Article 34

Deemed licence under the 2009 Act – artificial nesting structure(s)

[New DML to be included which will license the installation of offshore nesting structure(s)]

SCHEDULE 14

Article 37

Removal of important hedgerows

<i>(1) Area</i>	<i>(2) Reference to hedgerow</i>
	The important hedgerow marked [] on sheet [] of [] of the important hedgerows and tree preservation order plan.

SCHEDULE 15

Article 38

Trees subject to tree preservation orders

<i>(1) Area</i>	<i>(2) Type of tree</i>	<i>(3) Reference of trees</i>	<i>(4) Works to be carried out</i>
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SCHEDULE 16

Article 39

Protective Provisions

PART 1

Protection for electricity, gas, water and sewerage undertakers

[]

PART 2

Protection for operators of electronic communications code networks

[]

PART 3

Protection for Anglian Water Services Limited

[]

PART 4

Protection for National Grid as electricity and gas undertaker

[]

PART 5

Protection for the Environment Agency and drainage authorities

[]

SCHEDULE 17

Article 40

Arbitration Rules

Primary objective

1.—(1) The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the Arbitrator is appointed pursuant to article 40 (arbitration) of the Order.

(2) The Parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the Parties. Any dispute which is not resolved amicably by the senior management of the Parties within twenty business days of the dispute arising, or such longer period as agreed in writing by the Parties, shall be subject to arbitration in accordance with the terms of this Schedule.

(3) The Arbitration shall be deemed to have commenced when a party (“the Claimant”) serves a written notice of arbitration on the other party (“the Respondent”).

Time periods

2.—(1) All time periods in these Arbitration Rules are measured in days and this will include weekends but not bank holidays in England and Wales as defined in the Banking and Financial Dealings Act 1971.

(2) Time periods are calculated from the day after the Arbitrator is appointed which is either—

- (a) the date the Arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the Arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the Arbitration is set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 14 days of the Arbitrator being appointed, the Claimant must provide both the Respondent and the Arbitrator with—

- (a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant's contentions as to those issues, the amount of its claim and/or the remedy it is seeking; and
 - (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.
- (3) Within 14 days of receipt of the Claimant's statements under sub-paragraph (2) by the Arbitrator and Respondent, the Respondent must provide the Claimant and the Arbitrator with—
- (a) a written Statement of Defence responding to the Claimant's Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant's claim, its acceptance of any element(s) of the Claimant's claim, its contentions as to those elements of the Claimant's claim it does not accept;
 - (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;
 - (c) any objections it wishes to make to the Claimant's statements, comments on the Claimant's expert report(s) (if submitted by the Claimant) and explanations for the objections.
- (4) Within 7 days of the Respondent serving its statements under sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the Arbitrator with—
- (a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
 - (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
 - (c) any expert report in response to the Respondent's submissions;
 - (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent;
 - (e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The seat, or place, of the arbitration shall be London, England, the governing law shall be the laws of England and Wales and the language of the arbitration proceedings shall be English. The proceedings shall be conducted in accordance with the Arbitration Act 1996, save where modified by these Rules.

(2) The Arbitrator must make an award on the substantive difference(s) based solely on the written material submitted by the parties unless the Arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within 2 business days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within 7 days of receiving the last submission, the Arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within 10 days of the Arbitrator advising the parties that he is to hold a hearing, the date and venue for the hearing must be fixed by agreement with the parties, save that if there is no agreement the Arbitrator must direct a date and venue which he considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the Arbitrator's direction confirming the date and venue of the hearing.

(6) A decision must be made by the Arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the Arbitrator, then any expert(s) attending the hearing may be asked questions by the Arbitrator.

(7) There is no process of examination and cross-examination of experts, but the Arbitrator shall invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the Arbitrator's questions. Prior to the hearing the procedure for the expert(s) is—

- (a) at least 28 days before a hearing, the Arbitrator must provide a list of issues to be addressed by the expert(s);
- (b) if more than one expert is called, they are to jointly confer and produce a joint report or reports within 14 days of the issues being provided; and
- (c) the form and content of a joint report must be as directed by the Arbitrator and must be provided at least 7 days before the hearing.

(8) Within 14 days of a Hearing or a decision by the Arbitrator that no hearing is to be held the Parties may by way of exchange provide the Arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The Arbitrator must take these submissions into account in the award.

(9) Where a party requests an expedited procedure, accompanied by an evidenced reason for expedition, the Arbitrator may vary the timescales in sub paragraphs (3), (4), (5) and (7), but where a party does so, the Arbitrator must provide an opportunity for parties objecting to the effects of an expedited procedure to provide written submissions on that point and may decide to revert to standard timescales in response to such submissions. Where an expedited procedure is sustained, the Arbitrator must set out their reasons for acceding to an expedited timetable in writing, to be given alongside their award.

(10) The Arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within four months of the date on which they are appointed, unless both parties otherwise agree to an extension to the date for the award.

(11) If a party fails to comply with the timetable, procedure or any other direction then the Arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before them attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(12) The Arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given shall be proportionate to the issues in dispute and the time available to the Arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The Arbitrator has all the powers of the Arbitration Act 1996, including the non-mandatory sections, save where modified by these Rules.

(2) There must be no discovery or disclosure, except that the Arbitrator has the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the Arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders are to be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the Arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the Arbitrator. In the absence of agreement, the Arbitrator may vary the timescales and/or procedure—

- (a) if the Arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the Arbitrator must notify the parties that the award is completed, signed and dated, and that it is to be issued to the parties on receipt of cleared funds for the Arbitrator's fees and expenses.

Costs

6.—(1) The costs of the Arbitration must include the fees and expenses of the Arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the Arbitration.

(2) Subject to sub-paragraph (3), the Arbitrator will award recoverable costs on the general principle that each party should bear its own costs.

(3) The Arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as defined within the National Planning Practice Guidance or such other guidance as may replace it.

Confidentiality

7.—(1) Subject to sub-paragraphs (2), (3) and (4), any arbitration hearing and documentation shall be open to and accessible by the public.

(2) Where the Arbitration relates to a dispute or difference under the provisions of Schedule 16 (protective provisions), the hearings must take place in private unless otherwise agreed between the parties and any matters, materials, documents, awards, expert reports and the like are confidential and must not be disclosed to any third party without prior written consent of the other party.

(3) The Arbitrator may direct that the whole or part of a hearing is to be private and/or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(4) Nothing in this paragraph shall prevent any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.

Conservatory and Interim Measures

8.—(1) Unless the parties have otherwise agreed, after the arbitration has commenced, the Arbitrator may, at the request of either party, order any conservatory or interim measure it deems appropriate. Any conservatory or interim measure shall be in the form of an order, giving reasons, or of an award, as the Arbitrator considers appropriate.

(2) Unless the parties have otherwise agreed, either party may apply to the courts of England and Wales for conservatory or interim measures.

(3) Such application by a party shall not be deemed to be an infringement or a waiver of the arbitration agreement, and shall not affect the relevant powers reserved to the Arbitrator.

SCHEDULE 18

Article 41

Procedure for discharge of requirements

Applications made for certain approvals

1.—(1) Where an application has been made to a discharging authority for any consent, agreement or approval required or contemplated by any of the requirements within Part 3 of Schedule 1 (requirements) to this Order—

- (a) the undertaker must give the discharging authority sufficient information to identify the requirement(s) to which the application relates; and
- (b) the undertaker must provide such particulars, plans and drawings as are reasonably considered necessary to deal with the application.

(2) The discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(3) For the purposes of this paragraph, the decision period is—

- (a) where no further information is requested under paragraph 2 (further information), 56 days from the day immediately following that on which the application is received by the discharging authority;
- (b) where further information is requested under paragraph 2 (further information) 42 days from the day immediately following that on which the further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in sub-paragraph (a) or (b).

Further information

2.—(1) In relation to any application to which this Schedule applies, the discharging authority has the right to request such further information from the undertaker as is reasonably necessary to enable it to consider the application.

(2) If the discharging authority considers such further information to be necessary it must, as soon as reasonably practicable and within 28 days of receipt of the application notify the undertaker in writing specifying the further information required.

(3) If the discharging authority does not give such notification as specified in sub-paragraph (2) it is to be deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(4) A discharging authority may request further information under sub-paragraph (1) on more than one occasion provided that all such requests are made within the period specified by sub-paragraph (2).

Appeals

3.—(1) The undertaker may appeal to the Secretary of State in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required or contemplated by a requirement contained within Part 3 of Schedule 1 (requirements) to this Order or grants it subject to conditions to which the undertaker objects;
- (b) the discharging authority does not give notice of its decision to the undertaker within the decision period specified in paragraph 1 (applications made for certain approvals);
- (c) on receipt of a request for further information under paragraph 2 (further information) the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.
- (e) the discharging authority issues a notice further to sections 60 (control of noise on construction sites) or 61 (prior consent for work on construction sites) of the 1974 Act;

(2) The appeal process is as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State, which must include a copy of the application submitted to the discharging authority and any supporting documentation which the undertaker may wish to provide;
- (b) the undertaker must on the same day provide copies of the appeal documentation to the discharging authority and the relevant consultees (if applicable);
- (c) as soon as is practicable after receiving the appeal documentation, but in any event within 28 business days of receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person's attention should be sent;

- (d) the discharging authority and the relevant consultees must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under sub-paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
 - (e) the appeal parties shall make any counter-submissions to the appointed person within 20 business days of receipt of written representations pursuant to sub-paragraph (d) above.
- (3) The appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and within 40 business days of—
- (a) the deadline within sub-paragraph (2)(e); or
 - (b) the deadline for written submissions in respect of further information submitted in accordance with sub-paragraph (5), whichever is later.
- (4) If the appointed person considers that further information is necessary to enable consideration of the appeal the appointed person must, as soon as practicable, and within 10 business days of the deadline for submissions in accordance with sub-paragraph (2)(e), or where further information has already been requested, within 10 business days of the deadline for written submissions in accordance sub-paragraph (5), notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.
- (5) Any further information required under sub-paragraph (4) is to be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 business days of that date.
- (6) On an appeal under this paragraph, the appointed person may—
- (a) allow or dismiss the appeal; or
 - (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),
- and may deal with the application as if it had been made to the appointed person in the first instance.
- (7) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside of the relevant time limits.
- (8) The appointed person may proceed to a decision even though no written representations have been made within those time limits if it appears to the appointed person that there is sufficient material to enable a decision to be made.
- (9) The decision of the appointed person on an appeal is to be final and binding on the appeal parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.
- (10) If an approval is given by the appointed person under this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under Part 3 of Schedule 1 (requirements) as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing, but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.
- (11) Except where a direction is given under sub-paragraph (12) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person are to be met by the undertaker.
- (12) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it

is to be made, the appointed person must have regard to Planning Practice Guidance on the award of costs or any circular or guidance which may from time to time replace it.

Interpretation of Schedule 16

4. In this Schedule—

“the appeal parties” means the discharging authority, the undertaker and any relevant consultees.

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971;

“discharging authority” means the body responsible for giving consent, agreement or approval pursuant to a requirement within Part 3 of Schedule 1 (requirements) to this Order;

“relevant consultee” means any body named in a requirement which is required to be consulted by the discharging authority in discharging that requirement.

SCHEDULE 19

Article 42

Documents to be certified

PART 1

Documents forming the environmental statement to be certified

<i>(1) Document Reference (and relevant Chapters)</i>	<i>(2) Examination Library Reference (and relevant Chapter reference)</i>	<i>(3) Document Name</i>	<i>(4) Version</i>	<i>(5) Date</i>
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PART 2

Other Documents to be certified

<i>(1) Document Reference</i>	<i>(2) Examination Library Reference</i>	<i>(3) Document Name</i>	<i>(4) Version</i>	<i>(5) Date</i>
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SCHEDULE 20

Article 46

Compensation provisions

PART 1

Flamborough and Filey Coast Special Protection Area: Kittiwake Compensation Measures

1. In this Part—

“Defra” means the Department for Environment, Food and Rural Affairs;

“the FFC” means the site designated as the Flamborough and Filey Coast Special Protection Area;

“Kittiwake CIMP” means the kittiwake compensation implementation and monitoring plan for the delivery of measures to compensate for the predicted loss of adult kittiwakes from the FFC as a result of the authorised development;

“Kittiwake Compensation Plan” means the document certified as the kittiwake compensation plan for the purposes of this Order by the Secretary of State under article 42 (certification of plans etc.);

“KCSG” means the Kittiwake Compensation Steering Group;

“Marine Recovery Fund” means the fund operated by Defra pursuant to the Offshore Wind Environmental Improvement Package of the British Energy Security Strategy (April 2022) for the implementation of strategic compensation or any equivalent fund established for that purpose; and

“the offshore compensation measure” means the offshore nesting structure(s); and

“the onshore compensation measure” means the onshore nesting structure(s).

2. The offshore works may not be commenced until a plan for the work of the KCSG has been submitted to and approved by the Secretary of State. Such plan must include—

- (a) terms of reference of the KCSG;
- (b) details of the membership of the KCSG;
- (c) details of the proposed schedule of meetings, timetable for preparation of the Kittiwake CIMP and reporting and review periods; and
- (d) the dispute resolution mechanism.

3. Following consultation with the KCSG the Kittiwake CIMP must be submitted to the Secretary of State for approval, in consultation with the MMO and relevant statutory nature conservation body in respect of the offshore compensation measure (if required), and with the local planning authority or authorities for the land containing the artificial nest site, and the relevant statutory nature conservation body in respect of the onshore compensation measure (if required).

4. The Kittiwake CIMP must be based on the strategy for kittiwake compensation set out in the Kittiwake Compensation Plan and include—

- (a) details of the locations where the compensation measure will be delivered, and in the event an onshore structure is required, details of landowner agreement(s) and in the event an offshore structure is required, details of any relevant seabed agreement(s);

- (b) details of the design of the artificial nesting structure, including the projected number of nests that will be accommodated on the structure, and how risks from avian or mammalian predation and unauthorised human access will be mitigated;
- (c) an implementation timetable for the delivery of the artificial nesting structure;
- (d) details of the maintenance schedule for the artificial nesting structure;
- (e) details of the proposed ongoing monitoring and reporting on the effectiveness of the measures, including: survey methods; success criteria; adaptive management measures; timescales for the monitoring and monitoring reports to be delivered
- (f) provision for reporting to the Secretary of State, to include details of the use of the artificial nesting structure by breeding kittiwake to identify barriers to success and target any adaptive management measures in consultation with the KCSG;
- (g) minutes from all consultations with the KCSG; and
- (h) provision for the undertaker to elect, following consent in writing of the Secretary of State, to pay a contribution to the Marine Recovery Fund wholly or partly in substitution for the onshore compensation measure and/or the offshore compensation measure or as an adaptive management measure for the purposes of paragraphs 4(e) and (f) of this Part of this Schedule. The sum of the contribution to be agreed between the undertaker and Defra or other Government body responsible for the operation of the Marine Recovery Fund in consultation with the KCSG.
- (i) provision for the undertaker to elect, following consent in writing of the Secretary of State, to pay a financial contribution towards the establishment of compensation measures by another party wholly or partly in substitution for the onshore compensation measure and/or the offshore compensation measure or as an adaptive management measure for the purposes of paragraphs 4(e) and (f) of this Part of this Schedule. The technical specification of the compensation measure(s) to be agreed between the undertaker and the other party in consultation with the KCSG. The Secretary of State shall consult with the relevant statutory nature conservation body prior to granting consent in terms of this paragraph.
- (j) provision for the undertaker to elect, following consent in writing of the Secretary of State, to collaborate with another party in the delivery of compensation measures wholly or partly in substitution for the onshore compensation measure and/or the offshore compensation measure or as an adaptive management measure for the purposes of paragraphs 4(e) and (f) of this Part of this Schedule. The Secretary of State shall consult with the relevant statutory nature conservation body prior to granting consent in terms of this paragraph.

5. Paragraphs 6, 7 and 8 of this Part of this Schedule shall not apply to the extent that—

- (a) a contribution to the Marine Recovery Fund has been elected in substitution for the onshore compensation measure and/or the offshore compensation measure for the purposes of paragraph 4(h) of this Part of this Schedule;
- (b) a financial contribution towards the establishment of compensation measures by another party has been elected in substitution for the onshore compensation measure and/or the offshore compensation measure for the purposes of paragraph 4(i) of this Part of this Schedule; or
- (c) the undertaker has elected to collaborate with another party in the delivery of compensation measures in substitution for the onshore compensation measure and/or the offshore compensation measure for the purposes of paragraph 4(j) of this Part of this Schedule.

6. The undertaker must implement the measures set out in the Kittiwake CIMP approved by the Secretary of State, unless otherwise agreed in writing by the Secretary of State in consultation with the MMO and relevant statutory nature conservation body in respect of the offshore compensation measure (if required), and with the relevant local planning authority or authorities

and the relevant statutory nature conservation body for the onshore compensation measure (if required).

7. The undertaker must notify the Secretary of State of completion of implementation of the onshore compensation measure and/or the offshore compensation measure set out in the Kittiwake CIMP.

8. The onshore compensation measure and the offshore compensation measure must not be decommissioned without written approval of the Secretary of State in consultation with relevant statutory nature conservation body.

9. The Kittiwake CIMP approved under this Schedule includes any amendments that may subsequently be approved in writing by the Secretary of State. Any amendments to or variations of the approved Kittiwake CIMP must be in accordance with the principles set out in the Kittiwake Compensation Plan and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any materially new or materially different environmental effects from those considered in the Kittiwake Compensation Plan.

PART 2

Flamborough and Filey Coast Special Protection Area: Guillemot and Razorbill Compensation Measures

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PART 3

Flamborough and Filey Coast Special Protection Area: Gannet Compensation Measures

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PART 4

Inner Dowsing, Race Bank, and North Ridge Special Area of Conservation: Benthic Compensation Measures

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