



# The Sizewell C Project

## 3.2 Draft Development Consent Order Explanatory Memorandum - Tracked Changes Version

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**EXPLANATORY MEMORANDUM**  
(Deadline 67: Rev 7.0 8.0 dDCO)

**THE SIZEWELL C (NUCLEAR GENERATING STATION) ORDER 202[●]**

**1. Introduction**

- 1.1 NNB Generation Company (SZC) Limited ("**the undertaker**") has made an application (the "**Application**") to the Secretary of State for a development consent order ("**DCO**") to authorise the construction, operation and maintenance of the Sizewell C Project (which is described at Schedule 1 (Authorised Development) to the draft DCO which accompanies the Application and is entitled the Sizewell C (Nuclear Generating Station) Order 202[●] (the "**Order**").
- 1.2 The purpose of an explanatory memorandum is to assist the Examining Authority, Interested Parties and the Secretary of State in understanding the rights and powers sought within a draft DCO. This Explanatory Memorandum therefore explains the purpose and effect of each Article of, and schedule to, the Order, as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations (S.I. 2009/2264) (as amended). In particular, it sets out (as per the Planning Inspectorate's *Advice Note 15: Drafting Development Consent Orders*):
- the source of the provision (whether it is bespoke or based on a granted DCO);
  - the section/Schedule of the Planning Act 2008 ("**2008 Act**") under which it is made; and
  - the reasons why the Article is relevant to the proposed development and considered important/essential to the delivery of the Sizewell C Project.
- 1.3 This document should be read alongside the Order and the various documents submitted in respect of the Application.

**2. The Purpose of the Order**

- 2.1 Section 31 of the 2008 Act provides that a DCO is required to the extent that a development is, or forms part of, a nationally significant infrastructure project ("**NSIP**").
- 2.2 The Sizewell C Project is an NSIP under sections 14(1)(a) and 15(2) of the 2008 Act because it relates to an onshore generating station with a capacity of more than 50 megawatts (MW) in England. The Sizewell C Project will have up to 3,340MW of total installed generation capacity. Accordingly, the undertaker has made the Application in order to secure development consent for the Sizewell C Project. The Order is part of the Application.

***Development authorised by the Order***

- 2.3 The Sizewell C Project comprises the following principal elements:
- 2.4 The permanent components of the Sizewell C nuclear power station development and associated development (comprised within **Work No. 1A**) within the main development site, including:
- two UK EPR™ reactor units made up of reactor and associated buildings, plant and infrastructure, and turbine halls and electrical buildings;



- fuel and waste facilities, including interim storage for radioactive waste and spent fuel;
  - an operational service centre (including offices), a training building, and ancillary office and storage buildings;
  - a cooling water system and combined drainage outfall in the North Sea, and temporary marine outfall;
  - drainage and sewerage infrastructure;
  - transmission infrastructure including a National Grid 400kV substation and re-configuration of the existing National Grid substation;
  - backup power source and emergency response equipment store;
  - internal roads, a bridge to cross the Sizewell Marshes Site of Special Scientific Interest (SSSI), car parking, and a vehicle search area;
  - sea defence and a permanent beach landing facility for importation of AILs (forming part of the "**Marine Works**", along with the cooling water infrastructure comprising of intake and outfall tunnels and fish return system (**Work No.2**));
  - flood mitigation area and associated habitat;
  - landscaping of the areas to be restored following use during construction; and
  - improvement works to Kenton Hills Car Park.
- 2.5 Permanent highway and rail works facilitating access to the main development site:
- an access road including a new roundabout from the B1122 (**Work No. 1B**);
  - the realignment of the junction of the B1122 Abbey Road and Lover's Lane (**Work No. 1C**);
  - works associated with the relocation of certain Sizewell B power station facilities (**Work No. 1D or Work No. 1E**); and
  - improvements to the Saxmundham to Leiston branch line including upgrades to up to 9 level crossings (**Work No. 4C**)
- 2.6 The following temporary infrastructure on the main development site and associated rail works during the construction of the power station (the '**construction phase**')
- A temporary beach landing facility for importation of bulk materials (**Work No. 1A(bb)**)
  - an accommodation campus (**Work No. 3**);
  - temporary rail infrastructure, known as the 'Green Rail Route' (**Work No. 4B**); and
  - a temporary rail spur off the Saxmundham to Leiston branch line to provide a rail siding in land east of Eastlands Industrial Estate (**Work No. 4D**)
- 2.7 Sports facilities in Leiston comprising 3G pitches and MUGA (**Work No. 5**)
- 2.8 Fen meadows at Haleworth (**Work No. 6**) and at Benhall (**Work No. 7**) and at Pakenham (**Work No. 18**)
- 2.9 [Marsh harrier habitat at land west of Westleton (**Work No. 8**)]
- 2.10 A temporary park and ride facility located west of the village of Darsham, known as the 'Northern Park and Ride' required during the construction phase only (**Work No. 9**)
- 2.11 A temporary park and ride facility located north-east of Wickham Market, known as the 'Southern Park and Ride' required during the construction phase only (**Work No. 10**)
- 2.12 A bypass of Farnham and Stratford St Andrew on the A12, known as the 'Two Village Bypass' (**Work No. 11**)



- 2.13 A new road from the A12 to the B1122, known as the 'Sizewell Link Road' (**Work No. 12**)
- 2.14 A temporary freight management facility located in the vicinity of the A12/A14 junction, required during the construction phase only (**Work No. 13**)
- 2.15 The following highway works:
- A new three arm roundabout at Yoxford with realignment of the existing A12 and B1122 and removal of the existing A12 and B1122 ghost island junction (**Work No. 14**)
  - Improvements to the A12 and B1119 junction at Saxmundham (**Work No. 15**)
  - Improvements to the A1094/B1069 junction south of Knodisall (**Work No. 16**); and
  - Improvements to the A12 and A144 junction south of Bramfield (**Work No. 17**).
- 2.16 Consent is also sought for 'other associated development' as defined in Schedule 1 (Authorised Development) of the Order, which is connected with the construction, operation or maintenance of the Works defined in the Schedule.
- 2.17 Section 115(1) of the 2008 Act provides that development consent may be granted for "(a) development for which development consent is required, or (b) associated development". The *Department of Communities and Local Government's Planning Act 2008 Guidance: on associated development applications (Ref 1.3)* for major infrastructure projects describes associated development as being:–
- "typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project" and which "requires a direct relationship between associated development and the principal development".*
- 2.18 Associated development should therefore either support the construction, operation or maintenance of the authorised development or help address its impacts; it should not be an aim in itself but subordinate to the authorised development for which development consent is being sought. All of the Works described in Schedule 1 (Authorised Development) of the Order are considered by the Applicant to form part of the generating station within the meaning of s15 of the 2008 Act, or to comprise "associated development."
- 2.19 Section 120(3) of the 2008 Act provides that an order can make a provision "relating to, or to matters ancillary to, the development" and makes it clear (section 120(4)) that such matters 'include', in particular, provision for or relating to any of the matters listed in Part 1 of Schedule 5 of the 2008 Act. Section 120(5) also allows a DCO to apply, modify or exclude a statutory provision necessary to give effect to the powers in the DCO, include any provision that appears necessary or expedient to giving full effect to any other provision in the DCO, and include any incidental, consequential or transitional provisions or savings. This Explanatory Memorandum explains how the various provisions of the Order are provided for pursuant to these sections of the 2008 Act.

### **3. Part 1 – Preliminary**

- 3.1 Articles 1 (Citation and commencement) and 2 (Interpretation) of the Order contain preliminary provisions.

#### ***Article 1 (Citation and commencement)***

- 3.2 Article 1 provides for the commencement and citation of the Order.



## **Article 2 (Interpretation)**

- 3.3 The purpose of Article 2 is to define various terms used in the Order.
- 3.4 Particular definitions to note include:
- 3.5 "*authorised development*" encompasses all works and development authorised by the Order (as described in Schedule 1 of the Order) and should be read in that context in this memorandum.
- 3.6 "*commence*" incorporates the definition of a "material operation" under section 155 of the 2008 Act. The term 'commence' is used in Article 5 (Effect of the Order on the Sizewell B relocated facilities permission) and in a number of requirements in Schedule 2 (Requirements) of the Order. The relevant requirements (Requirements 1, 5, 5A, 7, 7A, 12, 12A, 12B, 12C, 13A, 14, 14C, 17, 20, 22 and 22A) express themselves as needing to be discharged before development can 'commence'. These types of requirement are sometimes referred to as pre-commencement requirements. The definition of 'commence' excludes certain activities, such that they may be carried out by the undertaker before a pre-commencement requirement is discharged. Excluded from this definition are operations consisting of site preparation and clearance works; pre- construction archaeological works; environmental surveys and monitoring; removal of hedgerows, trees and shrubs; investigations for the purpose of assessing ground conditions; diversion or laying of services; remedial work in respect of any contamination or adverse ground conditions (excluding works including and associated with dewatering activities carried out as part of Work No. 1A(l), Work No. 1A(t) and Work No. 1A(u) in Schedule 1); receipt and erection of construction plant and equipment; the temporary display of site notices and advertisements; and erection of temporary buildings, structures or enclosures related to all works except for Work No. 9 (northern park and ride), Work No. 10 (southern park and ride) or Work No. 13 (freight management facility). These works are authorised under Schedule 1 of the Order, as well as specific Articles of the Order (including Articles 24 (Protective work to buildings), 25 (Authority to survey and investigate land), 79 (Felling or lopping of trees and removal of hedgerows)). These excluded works within the definition comprise investigative, remedial, and mobilisation/preparatory works that will be undertaken at a stage where the detailed design of the authorised development, sufficient to enable all pre-commencement requirements to be discharged, is unlikely to have been completed. The ability to undertake these works ahead of main construction is of importance to the undertaker in the context of the anticipated construction programme. We note the Planning Inspectorate's comments in Advice Note 15 regarding the issue around the use of the term "commence" within DCOs. The Environmental Statement (Doc Ref. Book 6) does not indicate that the excluded works would be likely to have significant environmental effects. For this reason, the undertaker considers that the exclusion of these works from the definition is appropriate. In any event, these works will be controlled by the Code of Construction Practice ("**CoCP**") which the undertaker will be required to comply with in carrying out the authorised development under Schedule 2 of the Order. The CoCP specifies measures relating to the establishment of construction compounds, and therefore will effectively control these 'carve out' works. Therefore there is effective control over these excluded works which are excluded in order to allow the timely and efficient construction of the authorised development.
- 3.7 Definitions of the "*Approved Plans*", "*Associated Development Design Principles*", "*Book of Reference*", "*Code of Construction Practice*", "*Construction Method Statement*"<sup>1</sup>, "*Deed of Obligation*", "*Drainage Strategy*", "*Environmental Statement*", "*Fen Meadow Strategy*", "*Land Plans*", "*Lighting Management Plan*", "*Main Development Site Design and Access Statement*", "*Main Development Site Operational Siting and Height Parameters*", "*Main Development Site Water Monitoring and Response Strategy*", "*Outline Landscape and Ecology Management Plan*", "*Overarching Archaeological Written Scheme of Investigation*", "*Parameter Plans*", "*Peat Strategy*", "*Public Rights of Way Strategy*", "*Rail Noise Mitigation Strategy*", "*Rights of Way Plans*", "*Wet Woodland Strategy*" and "*Works Plans*" have been included as these are

<sup>1</sup>-Chapter 3, Volume 2 of the Environmental Statement



documents that will be certified under Article 80 (Certification of plans, etc.) and Schedule 22 (Certified Documents) of the Order and are key mechanisms by which the controls and mitigation relating to the authorised development will be secured. These definitions have been capitalised for clarity when referred to in the Order.

- 3.8 *"maintain"* is defined as: "includes inspect, repair, adjust, alter, refurbish, clear, remove or reconstruct, replace and improve, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental information, and any derivative of "maintain" is to be construed accordingly". The words "to the extent assessed in the environmental information" have been included within the definition to prevent the maintaining of the authorised development in a manner or to a degree which has not been assessed under the parameters of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 or varies the authorised development. This ensures that any maintenance activities remain within the scope of the authorised development that has been assessed and considered by the Secretary of State as decision-maker. The undertaker considers this definition to be appropriate to enable itself to properly maintain and protect the authorised development throughout the operational period (for example, maintenance activities will inevitably include the need to refurbish or reconstruct operational buildings or replace components of the power station following technological advances or damage). Maintenance activities would also be subject to other controls within the Order, such as the protective provisions. Precedent for similar Articles can be found in other generation DCOs concerning infrastructure with a similar life-cycle, such as Article 2 of the North London Heat and Power Generating Station Order 2017 (S.I. 2017/215) and Article 2 of the National Grid (Hinkley Point C Connection Project) Order 2016 (S.I. 2016/49), as well as in the Silvertown Tunnel Order 2018.
- 3.9 *"Order land"* is defined as meaning the land shown on the Land Plans and identified in the Book of Reference. The Order land is not limited to land which is to be acquired but also includes: (i) land owned by the undertaker or related companies; (ii) third-party land over which the undertaker is seeking to acquire rights; and (iii) land of which temporary possession is required for the construction, operation and maintenance of the Sizewell C Project.
- 3.10 *"Order limits"* is defined as those limits shown on the Works Plans, which is the extent of the area within which the authorised development may be carried out.
- 3.11 *"Sizewell B relocated facilities permission 1"* refers to permission granted to EDF Energy Nuclear Generation Limited under the Town and Country Planning Act 1990 ("**TCPA**") for the relocation of certain facilities used by the Sizewell B nuclear power station ("**Sizewell B relocation works**"), which will facilitate the construction of the Sizewell C Project. This definition relates to Article 5 (Effect of the Order on the Sizewell B relocated facilities permission) which provides a mechanism to enable the undertaker to switch between works undertaken under the Sizewell B relocated facilities permission and the Order, in relation to the Sizewell B relocation works. *"Sizewell B relocated facilities permission 2"* refers to alternative proposals making use of Sizewell A land which would avoid the need for the use of Pillbox Field for car parking and for which planning permission was granted on 18 February 2021.
- 3.12 *"specific associated development works"* is defined as Work Nos. 4B, 4D, 9, 10 and 13 of the authorised development which relate to the Green Rail Route and rail spur off the Saxmundham to Leiston branch line, Northern Park and Ride, Southern Park and Ride, and Freight Management Facility. As these works will be decommissioned prior to, or on completion of, construction of the power station, Schedule 24 (Miscellaneous Controls) of the Order modifies the section 57(2) of the TCPA so that the land used for these specific associated development works will revert to its previous use once these works have been decommissioned.
- 3.13 The definition of *"street"* transposes the definition of "street" under section 48 of the New Roads and Street Works Act 1991 ("**1991 Act**") so that it is clear that footpaths and highways are included within the definition of street under the Order. The definition under the 1991 Act has



also been expanded to include any viaduct, overpass or underpass which a street passes over/under as these elements form part of the authorised development (Work Nos. 11 and 12).

- 3.14 "undertaker" is defined as NNB Generation Company (SZC) Limited (or any other person who has the benefit of the Order under articles 8 (Benefit of Order) and 9 (Consent to transfer benefit of Order) (subject to certain restrictions discussed below)).
- 3.15 Article 2(2) clarifies that references in the Order to rights over land includes the rights to do anything in, on or under the land or in the airspace above and that the imposition of restrictions also includes restrictive covenants over the Order land.
- 3.16 Articles 2(3) and (4) clarify that measurements within the Order and Book of Reference are approximate. The purpose of this is to ensure that if, upon the carrying out of the works, it transpires that the distances, directions and lengths are marginally different to those listed in the Order or the Book of Reference, there is no issue over whether the works are permitted by the Order. The provision allows for a small tolerance with respect to any distances, directions and lengths within the Order limits.
- 3.17 Article 2(5) and 2(5A) clarify that references to statutory bodies include their successors to the functions relevant to the Order, and that references to east Suffolk Council and Suffolk County Council refer to these bodies in their capacities as local planning authority and local highway authority respectively unless otherwise stated.
- 3.18 Articles 2(6) to (8) provide further explanation as to how references in the Order to letters or numbered points, numbered works, documents or plans, and other references are to be construed.
- 3.19 Article 2(10) provides that the definitions in paragraph (1) do not apply to the deemed marine licence in Schedule 20 (which provides its own definitions).

#### 4. Part 2 - Principal Powers

##### ***Article 3 (Development consent, etc. granted by Order)***

- 4.1 This Article grants development consent for the authorised development to be carried out within the lines or situations shown on the Works Plans, subject to the requirements in Schedule 2 of the Order and the other provisions of the Order. This Article is provided for under section 115(1) of the 2008 Act.

##### ***Article 4 (~~Vertical limits~~ Limits of deviation)***

- 4.2 ~~While the horizontal limits within which all works may be situated is controlled by the Works Plans, other approved plans and the requirements (by means of Article 3), the vertical~~ The vertical and lateral limits within which the authorised development may be constructed are set out in Article 4. The ability to include such a power is contained in section 120(3) of the 2008 Act, which enables an order granting development consent to make provision relating to, or to matters ancillary to, the development for which consent is granted.
- 4.3 Article 4 of the Order provides that the 'green rail works route' (comprising Work Nos. 4A-4D 4B), the Two Village Bypass (Work No. 11) and Sizewell Link Road (Work No. 12) must be constructed no more than 1 metre above or below the levels shown on the Approved Plans and laterally to the extent indicated on the Parameter Plans, Approved Plans or as may be otherwise approved under a Requirement. For all other elements of the authorised development, this Article allows vertical and lateral deviation to the extent indicated on the Parameter Plans, Approved Plans or as may be otherwise approved under a Requirement but without any



deviation beyond this. This is necessary to ensure that impacts do not differ from those assessed in the Environmental Statement (Doc Ref. Book 6). ~~For all other elements of the authorised development, this Article allows vertical deviation to any extent necessary or convenient. This is, however, subject to any vertical parameters provided for in the Approved Plans and the requirements.~~

- 4.4 The use of vertical and horizontal limits under Articles 3 and 4 is intended to bring greater clarity around how the construction of the authorised development will be controlled, while still providing the undertaker with a necessary, but proportionate, degree of flexibility. This level of flexibility has also been considered in the environmental impact assessment, meaning that such powers are consistent with the findings set out within the Environmental Statement (Doc Ref. 6). This degree is appropriate given the scale and complexity of the authorised development (and its individual components) as it reduces the risk that the authorised development as approved cannot later be implemented due to unforeseen engineering or technical reasons.
- 4.5 While the drafting of this Article is bespoke to the Sizewell C Project requirements, such flexibility has been included in other granted DCOs, including Article 5 of the National Grid (Hinkley Point C Connection Project) Order 2016, Article 4 of the North London Heat and Power Generating Station Order 2017, and Article 6 of the Brechfa Forest West Wind Farm Order 2013 (S.I. 2013/586).

***Article 5 (Effect of the Order on the Sizewell B relocated facilities permission)***

- 4.6 Article 5 has been inserted to provide a mechanism by which the undertaker may implement the existing planning permission but later decide to switch to undertaking the Sizewell B relocated facilities permission pursuant to Work No. 1D of the Order or Work No. 1E of the Order (which is a variation of those works which would not require the use of Pillbox Field for car parking).
- 4.7 Article 5 therefore contains provisions which manage the relationship, and transition, between the Sizewell B relocated facilities permission and Work No. 1D and/or Work No. 1E. If the undertaker has implemented a planning permission for the Sizewell B relocation works but seeks to switch to undertaking Sizewell B relocation works under the Order, the undertaker will be required to serve notice on East Suffolk Council ("**ESC**"). Once notice has been served, the undertaker will be required to cease all works under the planning permission, and all conditions of the planning permission will become unenforceable (except to the extent that a breach of condition occurred prior to notice being served by the undertaker). The undertaker will from that point onwards be bound instead by requirements in Schedule 2 which relate to Work No. 1D or Work No. 1E as the case may be (either directly or as part of wider works on the main development site). If the undertaker has commenced Work No. 1E, it may not thereafter carry out works under Work No. 1D (Article 5(3)).
- 4.8 Article 5(6) and 5(7) provide that where certain specific conditions of the relevant existing planning permission have been discharged, equivalent requirements will be deemed to have been discharged under the Order. This will avoid the need for unnecessary resubmission of the same material for approval by ESC under the Order. Schedule 8 (Deemed Approval of Requirements Relating to the Sizewell B Relocated Facilities Permissions 1 and 2) sets out the requirements deemed to be approved by reference to those details already approved under planning conditions.
- 4.9 Article 5(8) makes similar provision in relation to any future planning permission which may be sought from ESC to authorise the Sizewell B relocated facilities. In order to avoid the situation where the undertaker is required to discharge the same condition under both instruments, Article 5(8) provides that ESC and the undertaker may agree that any details, plans, actions, documents or other matters that have been approved, agreed or undertaken pursuant to one of the conditions of the Sizewell B relocated facilities permissions may have deemed approval for the purposes of requirements relating to the Sizewell B relocated facilities under the Order.



- 4.10 The power to render the planning permission unenforceable through Article 5 is provided for under section 120(3) of the 2008 Act, which provides that an Order may make a provision relating to the development for which consent is granted, together with paragraph 11 of Part 1 of Schedule 5 of the 2008 Act, which relates to the exclusion of obligations or liability in respect of acts or omissions.
- 4.11 This Article follows the approach taken in Article 4 of the Hinkley Point C (Nuclear Generating Station) Order 2013, which also had early works being twin-tracked through the DCO and TCPA processes.

***Article 6 (Maintenance of the authorised development)***

- 4.12 This Article provides, for the avoidance of doubt, that the undertaker has the power to maintain the authorised development at any time, except to the extent any other provisions in the Order or any agreement made under the Order provide otherwise.
- 4.13 This Article has been inserted for the avoidance of doubt and in accordance with section 120(3) of the 2008 Act, and is also a matter specifically identified in paragraph 5 of Schedule 5 to the 2008 Act, which relates to the operation of the generating station. This Article ensures that the undertaker has the benefit of the statutory authority conferred by section 158 of the 2008 Act when maintaining the development authorised by the Order.
- 4.14 Identical Articles have been included in other generation DCOs, which have a similar operational period to the Sizewell C Project, including Article 5 of the North London Heat and Power Generating Station Order 2017, Article 5 of the Hinkley Point C (Nuclear Generating Station) Order 2013, and Article 4 of the Wrexham Gas Fired Generating Station Order 2017 (S.I.2017/766).

***Article 7 (Authorisation of use)***

- 4.15 Article 7 confirms that, once constructed, the undertaker has the authority to operate and use the authorised development. However, this power does not relieve the undertaker of its obligation to obtain other operational consents that may be needed in addition to the Order (for example, electricity or nuclear site licences) as expressly stated in Article 7(2).
- 4.16 This Article has been inserted for the avoidance of doubt and in accordance with section 120(3) and is a matter specifically identified in paragraph 5 of Schedule 5 to the 2008 Act, which relates to the operation of the generating station. It also reflects section 140 of the 2008 Act which provides that a DCO for the construction of a generating station may also include a provision authorising the operation of a generating station and has been included to ensure that the undertaker has the benefit of the statutory authority conferred by section 158 of the 2008 Act when operating the development authorised by the Order.
- 4.17 Similar Articles have been included in other generation DCOs including Article 6 of the North London Heat and Power Generating Station Order 2017, Article 7 of the Glyn Rhonwy Pumped Storage Generating Station Order 2017 (S.I. 2017/330), and article 5 of the Hirwaun Generating Station Order 2015 (S.I. 2015/1574) (although the explicit wording has minor variations to Article 7 of the Order).

***Article 8 (Benefit of Order)***

- 4.18 The "*undertaker*" is defined in Article 2 as NNB Generation Company (SZC) Limited or the person who has the benefit of the order in accordance with Article 9. Article 8 provides that NNB Generation Company (SZC) Limited has the sole benefit of the powers and rights under the Order, except in respect of the following three sets of works, for which the benefit of the Order



is granted to NNB Generation Company (SZC) Limited and the following parties: (a) Energy Nuclear Generation Limited, in respect of the Sizewell B relocation works 1 and Sizewell B relocation works 2; (b) Network Rail, in respect of the rail works; and (c) National Grid, in respect of the grid works. These works constitute in each case infrastructure which, while necessary to facilitate the development of the Sizewell nuclear power station, is likely to be carried out and owned by these named parties. Paragraph (2) further provides that nothing in paragraph (1) should be read as meaning that other parties expressly stated to benefit from the Order should be excluded from such benefits. [Paragraph \(3\) provides that East Suffolk Council and Suffolk County Council will be deemed to have the benefit of the DCO when exercising powers of entry due to a breach of the Deed of Obligation under article 9A\(2\)\(a\).](#)

- 4.19 This Article overrides section 156(1) of the 2008 Act (as permitted by 156(2) of the 2008 Act) which limits the benefit of the Order to anyone with an interest in the land. Due to the nature of the authorised development, it is entirely appropriate that the powers under the Order are only exercised by the specified parties and not any other person with an interest in the Order land (unless provided under Article 9).
- 4.20 Precedent for the use of similar provisions to paragraph (1) can be found in Article 6 of The Immingham Open Cycle Gas Turbine Order 2020, where powers to carry out particular works were given to National Grid, and the Riverside Energy Park Order 2020 where London Power Networks was granted the power to carry out certain works. Paragraph (2) has multiple precedents, including Article 7(2) of The Great Yarmouth Third River Crossing Development Consent Order 2020.

**Article 9 (Consent to transfer benefit of Order)**

- 4.21 Article 9 anticipates that there may be circumstances where the undertaker seeks to transfer its rights to another party. This Article enables the rights and powers under the Order to be transferred to another body with the consent of the Secretary of State, and, in limited situations, without consent provided the transferee or lessee holds certain qualifications or no further claims for compensation are likely to arise.
- 4.22 Article 9(1) provides that the consent of the Secretary of State is required to transfer to another person or body the benefit of the Order and related statutory rights. This is to ensure that any transferee or lessee is deemed appropriate and qualified by the Secretary of State to take control of the authorised development under the Order. The only exceptions to this are those set out in Article 9(5), described below.
- 4.23 Article 9(2) provides that the undertaker may not authorise the operation or use of ~~the power station~~ [Work No. 1A\(a\) to \(h\)](#) without transferring the benefit of the Order to that person.
- 4.24 Article 9(3) provides that the Secretary of State is obliged to consult the Marine Management Organisation ("MMO") before giving consent to transfer or grant to another person the whole of the benefit of the provisions of the deemed marine licence.
- 4.25 Article 9(5)~~(a)~~ makes it clear that the transferee or lessee will be subject to the same restrictions, liabilities and obligations under the Order as the undertaker. ~~Article 9(5)(b) provides that any incoming transferee or lessee must enter into a deed of adherence (binding them to the Deed of Obligation) with East Suffolk Council and Suffolk County Council prior to any transfer or grant of the benefit of the Order being made, unless otherwise agreed by the Secretary of State.~~
- [4.26 Article 9\(5A\) provides that the undertaker's obligations under the Deed of Obligation will be automatically enforceable against any person to whom the power to construct or operate Work No. 1A\(a\) to \(h\) has been transferred or granted under article 9 for so long as they benefit from such power.](#)



4.27 Article 9(5B) provides that the obligations of parties to the Deed of Obligation other than the undertaker are automatically enforceable by any person to whom the power to construct or operate Work No. 1A(a) to (h) has been transferred under article 9 for so long as they benefit from such power.

~~4.26~~4.28 Article 9(6) provides that no consent from the Secretary of State is required for the transfer of powers under the Order if the transferee or lessee is the holder of a nuclear site licence. This is considered appropriate on the basis that only a fit and proper nuclear operator would be granted a nuclear site licence by the Office for Nuclear Regulation, and therefore seeking a further approval to authorise the transfer of the Order to such a licensed operator seems unnecessary. ~~Similarly, no consent from the Secretary of State is required in circumstances where no further payments in respect of compensation are expected.~~

~~4.27~~4.29 Article 9(7), 9(8), 9(9) and 9(10), make provision for the service of notice on the Secretary of State where the consent of the Secretary of State to a transfer is not required.

~~4.28~~4.30 Like Article 8, this Article overrides section 156(1) of the 2008 Act (as permitted by 156(2) of the 2008 Act) which limits the benefit of the Order to anyone with an interest in the land. Due to the nature of the authorised development, it is entirely appropriate that the powers under the Order should be transferable in certain limited circumstances and, where appropriate, subject to the Secretary of State's consent.

~~4.29~~4.31 The wording of this Article largely reflects the approach taken in Article 9 of The Riverside Energy Park Order 2020, Article 7 of The Immingham Open Cycle Gas Turbine Order 2020 and Article 5 of The Hornsea Three Offshore Wind Farm Order 2020.

#### **Article 9A (Enforcement of the Deed of Obligation)**

~~4.30~~4.32 Article 9A provides a number of enforcement measures in respect of the Deed of Obligation, similar to those available in relation to the enforcement of planning obligations under section 106 Town and Country Planning Act 1990.

~~4.31~~4.33 Article 9A(1) provides that restrictions or requirements imposed under the Deed of Obligation may be enforced by injunction.

~~4.32~~4.34 Article 9A(2) provides a power of entry to East Suffolk Council and Suffolk County Council to carry out works and to recover expenses from the undertaker where there has been a failure by the undertaker to carry out operations required by the Deed of Obligation.

~~4.33 Article 9A(3) provides that East Suffolk Council and Suffolk County Council will be deemed to benefit from the Order powers when exercising their right to enter and carry out operations under article 9A(2).~~

~~4.34~~4.35 ~~Article 9A(4)~~Article 9A(3) requires the undertaker to give 21 days' notice to owners and occupiers of land before accessing it for the purpose of article 9A(2).

~~4.35~~4.36 Article ~~9A(4)~~9A(4) requires that the undertaker will not refuse or hinder access to land by East Suffolk Council or Suffolk County Council following receipt of a notice requiring access to land in its possession, provided that such access is in accordance with any reasonable requirements of the undertaker.

~~4.36~~4.37 Article 9A(5) authorises East Suffolk Council or Suffolk County Council to issue a warrant if entry to land is refused, and article 9A(6) obliges the person to whom the warrant is presented to allow entry onto the land. Article 9A(7) makes administrative provision in relation to the issuing of the warrant to two or more persons.



4.374.38 Article 9A(79A(8)) provides that the Deed of Obligation shall be a local land charge in respect of all freehold or leasehold interests in land owned by the undertaker within the Order limits.

4.384.39 While there is no direct precedent in other development consent orders for this provision, this article constitutes a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the 2008 Act and is important and necessary to ensure enforcement of the Deed of Obligation, which mitigates the impacts of the authorised development.

**Article 9B (Modification and discharge of obligations in the Deed of Obligation)**

4.394.40 This article makes provision for the Secretary of State to modify or discharge obligations in the Deed of Obligation, either by agreement or with the consent of the Secretary of State pursuant to an application by the undertaker against whom it is enforceable (article 9B(1)).

4.404.41 Article 9B(2) provides that the undertaker may apply to the Secretary of State to have an obligation in the Deed of Obligation modified or discharged, and article 9(4) provides that the Secretary of State must determine the application within three months. Where an obligation is determined by the Secretary of State to have effect subject to a modification, that modification shall have effect as if entered into on the date of the determination (article 9(5)). Article 9(6) provides that section 84 of the Law of Property Act 1925, allowing modification of restrictive covenants affecting land, does not apply to the Deed of Obligation..

4.414.42 There is no precedent for this provision in other development consent orders, however it is based upon the provision for modifying or discharging planning obligations as set out in section 106A Town and Country Planning Act 1990. This article constitutes a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the 2008 Act and is important and necessary to ensure the Deed of Obligation can be varied where appropriate in future.

**Article 10 (Defence to proceedings in relation to statutory nuisance)**

4.424.43 Article 10 provides that no statutory nuisance claims under the Environmental Protection Act 1990 can be brought against the undertaker in respect of noise or light effects, if those effects were created during the construction, operation or maintenance of the authorised development provided that:

- notice has been given under section 60 (control of noise on construction sites) or consent has been obtained under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974 (“CoPA”) and works are carried out in accordance with the notice and consent;
- controls and measures relating to these effects have been set out under the Construction Method Statement, Code of Construction Practice, Lighting Management Plan, Associated Development Design Principles, Main Development Site Design and Access Statement and Outline Landscape and Ecology Management Plan or in accordance with noise and lighting levels under an environmental permit relating to the construction, maintenance or operation of the authorised development; or
- such effects cannot reasonably be avoided.

4.434.44 Article 10(1)(a)(iii) includes reference to controls and measures set out under the CoCP and other control documents, as well as those controls set out within any environmental permit granted for the construction, maintenance or operation of the authorised development. This addition is to ensure that it will also be a defence if the effects are in compliance with those approved measures and limits.



~~4.44~~<sup>4.45</sup> Article 10 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the 2008 Act and is a matter specifically identified in paragraph 11 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the exclusion of liability in respect of acts or omissions.

~~4.45~~<sup>4.46</sup> A similar approach has been followed in other DCOs where the authorised development was being constructed in close proximity to residential and commercial properties, such as Article 9 of the North London Heat and Power Generating Station Order 2017, Article 8 of the Keuper Underground Gas Storage Facility Order 2017 and Article 7 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014/2384)

~~4.46~~<sup>4.47</sup> Article 10 of this Order modifies these precedent Articles to include references to the potential nuisances under the Environmental Protection Act 1990 arising from the Sizewell C Project and the control documents specific to the Sizewell C Project and does not limit this defence to the construction period only (as this was a bespoke insertion in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014).

## **5. Part 3 – Powers in respect of Streets**

### ***Article 11 (Power to alter layout etc., of streets)***

- 5.1 Article 11 provides the undertaker, subject to certain restrictions, with the power to alter or carry out works within a street.
- 5.2 Articles 11(1) and (3) provide the undertaker with powers to enter onto, alter the layout of a street or carry out any works (either temporarily or permanently) within the Order limits, with the consent of the street authority, for the purposes of constructing and maintaining the authorised development.
- 5.3 Article 11(1) sets out a broad range of works that the undertaker may undertake on any street including altering the level or increasing the width of any street, footpath or carriageway, making and maintaining passing places, altering existing facilities in streets and undertaking works to manage and protect pedestrians (for example, creating pedestrian crossings).
- 5.4 Article 11(2) provides that any street altered temporarily under this Article must be restored to the reasonable satisfaction of the street authority.
- 5.5 Article 11(4) provides that where a street authority fails to respond to an application for consent under Article 11(3) within 56 days of the application being made, it is deemed to have given its consent under Article 11(3). This Article is considered necessary to enable the undertaker to exercise its powers and undertake works in an efficient and expedient manner and to give full effect to the power to carry out the authorised development. It is important to note that the deemed approval provision does not remove the street authority's ability to refuse the application, it simply imposes a deadline by which they must exercise their statutory functions.
- 5.6 The inclusion of deemed approval, which appears in a number of other Articles in the Order, is considered reasonable and aligns with the objectives of the 2008 Act to ensure efficient delivery of nationally significant infrastructure projects. Inclusion of similar timeframes for decisions, and deemed approval, under the Order ensures that the undertaker can deliver the Sizewell C Project in an efficient manner and the intention of the 2008 Act is not undermined.
- 5.7 Article 11 is provided for under section 120(3) and (4) together with paragraph 15 of Part 1 of Schedule 5 of the 2008 Act, namely the carrying out of civil engineering or other works.
- 5.8 Similar provisions to Article 11 have been included in other generation and infrastructure DCOs which also required works within public streets, such as Article 8 of the Hirwaun Generating



Station Order 2015, Article 12 of the National Grid (Hinkley Point C Connection Project) Order 2016, Article 10 of the Meaford Gas Fired Generating Station Order (S.I. 2016/779) and Article 11 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. The works and timing for approvals has, however, been amended in Article 11 to reflect the scale of the works anticipated under the Sizewell C Project. Article 11 does not set out the provisions of the 1991 Act that have been disapplied in Article 11 as this is set out under Article 13 of the Order. In terms of the deemed approval provisions (summarised above), a number of DCOs, such as National Grid (Hinkley Point C Connection Project) Order 2016, have been granted with deemed approval provisions to prevent consenting authorities failing to provide a response within a reasonable time to an applicant's request for approvals.

- 5.9 We note that some DCOs limit the power to alter the layout of streets to certain specified streets listed in a Schedule only. In drafting the Order our approach has instead been to define specifically all of the highway works which we anticipate to be required for the project in Schedule 1. The powers sought in Article 11 are therefore sought only in case any other minor highway works are identified in future by the local highway authority or the undertaker which it is necessary or convenient for the undertaker to carry out within the regime imposed by the Order. While such a power might appear wide, the consent of the street authority is required in order for this power to be exercised, which we consider provides the requisite level of control.

**Article 12 (Street works)**

- 5.10 Article 12 provides that the undertaker may undertake works in, on, or under those streets identified in Schedule 9 (Streets subject to street works) for the purposes of the authorised development. Consent from the street authority is not required for works on a street identified in Schedule 9 (Streets subject to street works).
- 5.11 Article 12(1) outlines a range of street works that may be carried out by the undertaker on streets identified in Schedule 9 of the Order and within the Order limits. Such works include, for example, ~~removing, relocating or replacing street furniture and bus infrastructure, works to improve sightlines, hard and soft landscaping, relining and replacement of road markings, and the removal and provision of permanent and temporary signage~~breaking or opening up the street, tunnelling or boring under the street, and placing or keeping apparatus in the street. These works are necessary to carry out the authorised development under Article 3 (Development consent, etc. granted by Order).
- 5.12 Article 12(2) provides the undertaker with a broad power to undertake street works on any street whether it is located within or outside the Order limits, with the consent of the relevant street authority. This is considered appropriate as the authorised development is not contiguous and so the undertaker may need to undertake works on a street between geographically separate Order limits for the purposes of the authorised development. For example, this power could be used to carry out works to improve sightlines (i.e. cutting back obstructions, such as trees and hedges, that impact on visibility of the authorised development) to tie-in the Two Village Bypass and Sizewell Link Road into the existing highway, or to install traffic signage on approach roads to the Order limits to ensure the safety of users of the authorised development, or to reflect changes in speed conditions. This power is sufficiently restricted through the requirement for the street authority to provide its consent to such works.
- 5.13 Where a street authority's consent is required under Article 12(2), Article 12(3) includes a deemed consent provision whereby consent is deemed granted where the street authority fails to provide a response within 56 days of the application being made. As noted earlier, this is considered necessary to enable the undertaker to exercise its powers and undertake works in an expedient manner.
- 5.14 Article 12 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) as it is required to enable the undertaker to construct and maintain the authorised development. Article 12 does not include any clarification that the power granted in Article 12(1)



is a “statutory right” for the purposes of the 1991 Act. This is because a statutory right for the purposes of the 1991 Act is defined as including any right conferred by an enactment (including subordinate legislation), which includes a DCO made as a Statutory Instrument. Section 117(4) of the 2008 Act requires certain DCOs to be made as Statutory Instruments – including DCOs that create byelaws (see Article 61) and those amending legislation (see Articles 80 and 81). As the Order will be made as a Statutory Instrument this clarification is unnecessary.

- 5.15 Equivalent provisions to Article 12 of this Order can be found in other granted DCOs which also require works within public streets, such as Article 10 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. However, Article 12 of this Order increases the range of listed street works, includes a deemed approval provision, and excludes sub-paragraphs (3) and (7) of the Thames Tideway Order as these are not considered relevant to the Sizewell C Project.

### ***Article 13 (Application of the 1991 Act)***

- 5.16 This Article sets out how the 1991 Act will apply to the authorised development.
- 5.17 Article 13(1) makes it clear that specific works such as the reconstruction, widening or substantial levelling of the highway, carried out by the undertaker on the highway, will be treated as if they are “major highway works” carried out by a highway authority for the purposes of Part 3 of the 1991 Act (street works in England and Wales). This provision ensures that the cost sharing provisions under section 85 of the 1991 Act (sharing of cost of necessary measures) applies to the Order, in particular, Articles 36 (Rights under or over streets), 41 (Apparatus and rights of statutory undertakers in stopped-up streets) and 42 (Recovery of costs of new connections). It is also intended to apply the co-ordination measures under section 84 of the 1991 Act (measures necessary where apparatus affected by major works) to such works whereby the undertaker and other statutory undertakers must co-operate to secure the efficient implementation of the works.
- 5.18 Article 13(2) provides that certain provisions of the 1991 Act listed in Article 13(2) will apply to the carrying out of works under Articles 11 (Power to alter layout etc. of streets), 12 (Street works), 14 (Permanent stopping up of streets and extinguishment of private means of access) and 17 (Temporary stopping up of streets). The listing of temporary alterations, stopping up and diversions under Article 13(2)(c) makes it clear that these works are “street works” for the purposes of the 1991 Act. This would, for example, require the undertaker to make arrangements, so far as practicable, for utilities to gain access to their apparatus.
- 5.19 Article 13(2) identifies select provisions of Part 3 of the 1991 Act that are to apply to street works carried out under the Order. The practical effect of this is that sections 56, 58, 61-64, 66, 71-74, 77, 78, 82-84 and 86-106 of the 1991 Act do not apply when the undertaker is carrying out street or highway works under the Order. This is considered appropriate as these sections are either not relevant to the authorised development, or will be managed through the powers in the Order, the protective provisions relating to apparatus owned by statutory undertakers in Schedule 20 (Protective Provisions) of the Order, or through the CoCP which control (through the requirements) how the undertaker carries out the construction of the authorised development and works in streets and highways.
- 5.20 Article 13(3) confirms that the emergency procedures under section 57 of the 1991 Act apply to any stopping up, alteration or diversion required in an emergency, rather than the procedures set out in sections 54 and 55 of that Act. This enables the undertaker to act quickly in the event of an emergency as it does not first have to comply with notification processes.
- 5.21 Article 13(4) clarifies that references in Part 3 of the 1991 Act to the highway authority in respect of major highway works should be read as references to the undertaker.



- 5.22 The power to apply and disapply sections of the 1991 Act is provided for under section 120(5) of the 2008 Act.
- 5.23 Precedent for the approach taken to the application and disapplication of the 1991 Act can be found in two other generation DCOs, the Glyn Rhonwy Pumped Storage Generating Station Order 2017 (Article 12) and the Hinkley Point C (Nuclear Generating Station) Order 2013 (Article 9).

***Article 14 (Permanent stopping up of streets, change of status and extinguishment of private means of access)***

- 5.24 This Article enables the permanent stopping up of any streets or public rights of way ("**PRoW**") and extinguishment of private means of access ("**PMA**"). It also enables the undertaker to change the status of certain highways (from carriageways open to all traffic, to footways open to pedestrians only). This Article is subject to Article 41 (Apparatus and rights of statutory undertakers in stopped-up streets). This ensures that there are sufficient protections in place for statutory undertakers as Article 41 prescribes specific processes which the undertaker must follow in respect of the removal, relocation or substitution of statutory undertakers' apparatus within streets it is seeking to stop up.
- 5.25 Article 14(1), and (3) to (7) provide the undertaker with powers to stop up the streets (both roadways and footways), PRoWs and PMAs specified in Parts 1 and 2 of Schedule 10 (Streets to be permanently stopped up or private means of access extinguished) to the extent specified in that Schedule. The process for stopping up differs depending on whether or not a substitute street, PRoW or PMA will be provided.
- 5.26 Where a substitute street, PRoW or PMA is to be provided, the street, PRoW or PMA must not be stopped up until the substitute, or a temporary alternative route, has first been provided. In the case of a street, the substitute street or PRoW must be provided to the reasonable satisfaction of the street authority or in the case of a footpath created to the standard specified in the [footpath-public rights of way](#) implementation plan (Article 14(2)). The location and extent of any substitute street, PRoW or PMA (as well as details of its substitute) is set out in Part 1 of Schedule 10 (being a street to be stopped up or PMA to be extinguished for which a substitute is to be provided).
- 5.27 Article 14(1) and (3) provides the undertaker with the power to change the status of streets specified in Part 3 of Schedule 10, from highways open to all traffic (carriageways) to highways open to pedestrians only (footways), once completed to the reasonable satisfaction of the street authority, or upon provision of a temporary alternative route for pedestrian users.
- 5.28 Where no substitute street, PRoW or PMA is to be provided, the street or PRoW cannot be stopped up or the PMA extinguished unless at least one of the conditions specified in Article 14(6) in relation to land which abuts the street, PRoW or PMA has been met. These conditions relate to instances where the stopping up would have no effect as access to that street, PRoW or PMA has already been precluded (through there not being any right to access to begin with, the owner agreeing to the stopping up, or the undertaker being in possession of the land) or another suitable form of access is available. Those streets, PRoWs and PMAs that are to be stopped up without a substitute street, PRoW or PMA being provided are identified in Part 2 of Schedule 10 (being a street to be stopped up or PMA to be extinguished for which no substitute is to be provided).
- 5.29 Article 14(4) makes it clear that where the undertaker provides a substitute street, PRoW or PMA, or changes the status of a highway, it is not required to provide that substitute to a higher standard than the street, PRoW or PMA that was stopped up or extinguished. This is to ensure that the undertaker is only required to provide a like-for-like replacement (for example, where



the previous path was just a track through a field, the undertaker would not be required to provide a formal sealed footpath).

- 5.30 Article 14(7) confirms that that where a street or PRoW is stopped up or PMA extinguished, all rights of way will be extinguished and the undertaker may use that street or PRoW for the purposes of the authorised development (i.e. for construction laydown areas) provided it owns the land on either side of the street, PRoW or PMA.
- 5.31 Article 14(8) provides that where someone suffers a loss as a result of any suspension or extinguishment of any private right of way, they will be entitled to compensation.
- 5.32 Article 14(10) clarifies that, for the purposes of this Article and Schedule 10, the definition of "street" under Article 2 of the Order has been expanded to also include PRoWs. This is to ensure that all types of streets that are affected by the authorised development are subject to these powers.
- 5.33 Article 14 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 17 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the stopping up or diversion of highways, which in this context would include footpaths and bridleways and other forms of "streets" (see definitions of "highway", "footpath" and "bridleway" in sections 328 and 329 of the Highways Act 1980 and "street" in Article 2 of the Order).
- 5.34 This Article has been based on Article 9 of the Silvertown Tunnel Order 2018 and Article 15 of the Hinkley Point C (Nuclear Generating Station) Order 2013, although the latter did not deal with PMAs specifically.

***Article 15 (Status of footpaths created or improved)***

- 5.35 This Article sets out the status that "footpaths" created or improved under the Order will have upon completion.
- 5.36 Footpaths identified as "footpaths created or improved" in Schedule 11 (Status of footpaths created or improved) will have the status identified in column (3) of that Schedule from the date that the highway authority is satisfied that they have been constructed to a standard specified in a ~~footpath~~-public rights of way implementation plan, to be agreed with the highway authority.
- 5.37 This Article only deals with the status of the PRoW created or improved (i.e. footpath or bridleway). It does not provide for the extinguishment or re-provisions of PRoW as this is dealt with under Article 14 (Permanent stopping up of streets) of the Order. Article 15 is therefore limited to determining the status of these footpaths to avoid duplication with Article 14 of the Order.
- 5.38 This Article is provided for under section 120(3) of the 2008 Act.
- 5.39 Precedent for this Article can be found in article 16 of the Hinkley Point C (Nuclear Generating Station) Order 2013 which also had to create a number of footpaths within the Order limits and therefore proposed a ~~footpath~~-public rights of way implementation plan to facilitate their construction.

***Article 16 (Benefit of private means of access or private rights of way created)***

- 5.40 This Article has been drafted to enable the undertaker to provide PMA or private rights of way to any land owners whose PMA or private right of way is permanently extinguished or compromised by the authorised development, without need for the undertaker to acquire the land over which the new right of way or access is to be created. This is particularly important for the Sizewell C Project because the two proposed road schemes (the Sizewell Link Road



and Two Village Bypass) will in some cases compromise land owner access to the fields through which these new roads will run.

- 5.41 The undertaker has sought to identify all PMAs, private rights of way and routes across private land used by land owners which will be adversely affected by the authorised development. Column (1) of Schedule 12 (Benefit of permanent private means of access or private rights of way created), lists the Land Registry title numbers of the land which require the benefit of a new right of way or PMA in order to avoid or minimise inconvenience to the use of their land. Column (3) of Schedule 12 identifies by reference to the Rights of Way Plans the proposed new private right of way or PMA, and column (2) of Schedule 12 sets out the Land Registry title number of the land through which the proposed new PMA or private right of way will run (the "affected land").
- 5.42 However, to enable the undertaker to deal with any further access or rights of way issues which may in future be identified as affecting other land owners, Article 16 is drafted widely – allowing the undertaker to create new PMA or private rights of way anywhere within the permanent limits where necessary to facilitate access to land by land owners who would otherwise be prejudiced by the authorised development. [However, article 16\(1A\) provides that this power is without prejudice to the requirement under article 19\(1\)\(b\) to first obtain the street authority's approval.](#)
- 5.43 Article 16(2) provides that a new PMA or private right of way (both those specified in Schedule 12 and others) may be created via service of 28 days' notice on the owner of the affected land. The newly created right is specified by Article 16(3) to authorise access on foot, with livestock, with vehicles or with plant and machinery, unless otherwise specified by the undertaker in the notice. Owners of affected land (i.e. land burdened by the newly created rights) may claim compensation under Article 16(5).
- 5.44 It should be noted that in some cases, the undertaker may wish to provide a PMA or private right of way to a particular land owner temporarily, during the construction period. In such cases, the undertaker would grant such access pursuant to its rights of temporary possession under the Order (see Article 37).
- 5.45 While there is no direct precedent we are aware of for Article 16, this Article constitutes a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the 2008 Act and is important and necessary to minimise impact upon affected land owners.

***Article 17 (Temporary closure of streets and private means of access)***

- 5.46 The authorised development includes works on land through which PRoW are located which must be temporarily diverted during the carrying out of development works (for example on the main development site). The authorised development also includes a number of highway works where temporary closure of certain streets and PRoW is necessary while works to tie-in existing highways to new highways (in particular the Two Village Bypass and Sizewell Link Road) are carried out.
- 5.47 This Article allows the undertaker to temporarily close, alter, or divert streets or PRoWs and temporarily extinguish PMAs during, and for the purposes of, the authorised development. It also includes the right to divert any traffic and prevent all persons from passing along the street, PRoW or PMA for any reasonable time. In the event that pedestrian access is prevented, the undertaker must ensure that access is provided to any premises that abut the affected street, PRoW or PMA where there would be no other way to access those premises.
- 5.48 In the case of streets, PRoWs or PMAs specified in Part 1 of Schedule 13 (Streets and private means of access to be temporarily closed for which a substitute is not specified), these streets, PRoWs or PMAs may only be closed following consultation with the street authority. Consent from the street authority is not required for streets, PRoWs or PMAs that have been specifically identified in Schedule 13. Any other streets, PRoWs and PMAs (not identified in Schedule 13) may only be temporarily closed with the consent of the street authority. Where someone suffers



a loss as a result of any suspension of any private right of way, they will be entitled to compensation.

- 5.49 Article 17(2) allows the undertaker to use any street or PRoW that has been closed, altered or diverted as a temporary working site. This is considered appropriate and necessary to facilitate construction of the authorised development and allow the undertaker to avoid having to acquire additional interests to accommodate additional construction lay-down or compound areas.
- 5.50 Article 17(5)(b) enables the undertaker to close, alter or divert any other street not listed in Schedule 13, whether or not it is within the Order limits, provided consent from the street authority is obtained. Although the undertaker must seek consent from the street authority prior to exercising any power under this Article in relation to a street, PRoW or PMA which has not been included in Schedule 13, Article 17(5)(b) includes a requirement that such consent cannot be unreasonably withheld or delayed. Article 17(10) also provides that where a street authority fails to respond to any application for consent within 56 days of receiving it, it will be deemed to have given its consent. Given that the powers under this Article only allow for a temporary interference with a street, PRoW or PMA, a deemed approval process under Article 17(10) is considered appropriate as it will provide the undertaker the certainty that it will be able to deliver the Sizewell C Project efficiently.
- 5.51 Article 17(6) is bespoke drafting which we consider appropriate to deal with the particular circumstances of the Sizewell C Project, which necessitate very long term closure certain streets, PRoWs and PMA during the construction period (approximately 9 to 12 years). This provision cross-refers to Part 2 of Schedule 13 (closure of streets and extinguishment of PMA for which a substitute is specified). Article 17(6) provides that the temporary substitute street or PMA specified in the table in Part 2 of Schedule 13 must be provided (or an alternative temporary point-to-point access provided) prior to the temporary closure of the relevant street or PMA. We consider providing this certainty in terms of the specific temporary substitute streets or means of access to be appropriate given the long-term nature of these temporary closures. Article 17(6) substantially replicates equivalent provisions relating to permanent stopping up of streets for which a substitute is to be provided (see Article 14 of the Order).
- 5.52 Article 17(7) has been inserted to make it clear that where the undertaker provides a temporary substitute street, PRoW or PMA, it is not required to provide that substitute to a higher standard than the street, PRoW or PMA that was closed. This is to ensure that the undertaker is only required to provide a like-for-like street, PRoW or PMA (for example, where the previous path was just a track through a field, the undertaker would not be required to provide a formal sealed footpath).
- 5.53 Article 17(8) confirms that where the undertaker temporarily closes any street under this Article, it will be required to reinstate the street to its original condition.
- 5.54 This Article is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in Paragraph 17 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the closure or diversion of highways, which in this context would include footpaths and bridleways and other forms of "street" (see definitions of "highway", "footpath" and "bridleway" in sections 328 and 329 of the Highways Act 1980 and "street" in Article 2 of this Order).

Precedent for this Article can be found in the National Grid (Hinkley Point C Connection Project) Order 2016 and various Orders under the Transport and Works Act 1992, as well as Article 17 of the Hinkley Point C (Nuclear Generating Station) Order 2013.

#### ***Article 18 (Use of private roads for construction)***

- 5.55 Article 18 authorises the temporary use by persons or vehicles along private roads situated within the Order limits for the purposes of, or in connection with, the construction of the



authorised development without the need for the undertaker to acquire a formal permanent easement over that land. Where the undertaker seeks to exercise its power under this Article, it will be liable to compensate any person who claims damage or loss suffered as a result of the undertaker using private roads during construction.

- 5.56 Article 18 therefore creates a power to 'use' a private road for a temporary period that is proportionate to the limited nature of the use, rather than extinguishing, suspending or permanently interfering with the private rights of land owners (through the imposition of a permanent easement right). This is akin to the powers for temporary use under Articles 37 (Temporary use of land for carrying out authorised development) and 39 (Temporary use of land for maintaining authorised development) of the Order; however, it is distinguished because the undertaker does not require exclusive use and possession of the private roads while exercising this power.
- 5.57 Article 18 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and Schedule 5, Part 1, Paragraph 2 of the 2008 Act as it is required for the construction of the authorised development.
- 5.58 Article 18 is based on Article 13 of the Silvertown Tunnel Order 2018.

***Article 19 (Access to works)***

- 5.59 Article 19(1)(a) provides that the undertaker may, for the purposes of the authorised development, make accesses to the public highway at any locations within the Order limits identified on the Rights of Way Plans.
- 5.60 Article 19(1)(b) provides that the undertaker may make other accesses onto the highway with the consent of the street authority, following consultation with the highway authority.
- 5.61 Article 19(3) provides that where a street authority fails to notify the undertaker of its decision under Article 19(1)(b) within 56 days of receiving the application, the street authority will be deemed to have granted consent.
- 5.62 The powers under this Article are provided for under sections 120(3) and (4) together with paragraph 15 of Schedule 5 of the 2008 Act as the use of existing access tracks and private roads for construction purposes is clearly related to the construction of the authorised development.
- 5.63 Precedent for the drafting of this Article can be found in Article 14 of the National Grid (Richborough Connection Project) Development Consent Order 2017, Article 18 of The Hinkley Point C (Nuclear Generating Station) Order 2013 and Article 14 of the National Grid (Hinkley Point C Connection Project) Order 2016.

***Article 20 (Construction and maintenance of new and altered streets)***

- 5.64 Articles 20(1) and 20(2) provide that any street constructed, altered or diverted under the Order must be completed to the reasonable satisfaction of the highway authority and be maintained at the undertaker's expense for 12 months following its completion, after which it is to be maintained at the expense of the highway authority.
- 5.65 Articles 20(3) and 20(4) have the effect of incorporating section 58 of the Highways Act 1980 (special defence in action against a highway authority for damages for non-repair of highway) and provide the undertaker with a defence against any action for damages resulting from its failure to maintain the street. Under Article 19(4), the undertaker will have a defence that it has



taken such care as was reasonably required in the circumstances to ensure that the street was not dangerous to traffic.

- 5.66 This Article is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the 2008 Act as it is required for the maintenance of the authorised development.
- 5.67 This Article replicates Article 19 of the Hinkley Point C (Nuclear Generating Station) Order 2013.

#### ***Article 21 (Agreements with street and highway authorities)***

- 5.68 Article 21 provides that street authorities may enter into agreements with the undertaker relating to:
- the construction of new streets under the Order;
  - any stopping up, alteration or diversion of a street under the Order;
  - the maintenance of the structure of any ~~bridge or viaduct~~, underpass, overpass or bridge carrying a street over or under any part of the authorised development;
  - the carrying out of works in a street under Articles 11 (Power to alter layout etc., of streets) and 12 (Street works); and
  - any other works as the parties may agree.
- 5.69 Article 21(3) provides that the undertaker may not commence any of the highway works authorised by the Order until it has entered into an agreement with the highway authority setting out the specification of the works which will reasonably satisfy the highway authority for the purpose of article 20(1) and 20(2) relating to the maintenance and adoption of such works.
- 5.70 Article 21 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) as it directly relates to the safe construction of the authorised development. The power to enter into agreements with street authorities and highway authorities is necessary as section 278 of the Highways Act 1980 (agreements as to execution of works) does not relate to the powers under the Order.
- 5.71 A similar approach has been taken in granted connection DCOs, such as Article 20 of The Hinkley Point C (Nuclear Generating Station) Order 2013, Article 15 of the National Grid (Richborough Connection Project) Order 2017 and Article 15 of the National Grid (Hinkley Point C Connection Project) Order 2016,.

#### ***Article 22 (Traffic regulation measures)***

- 5.72 Article 22(1) provides the undertaker with power to impose temporary and permanent traffic regulation orders ("**TROs**") relating to speed limits on the specific sections of road identified in Schedule 14 (Traffic Regulation Measures).
- 5.73 In addition to the specific measures provided for by Article 22(1), Article 22(2) enables the undertaker to impose traffic regulations, of the types listed, in respect of any street for the purposes of the authorised development, whether or not within the Order limits, provided the consent of the traffic authority is obtained. This includes, among other things, the right to place traffic signs on or near a street, in particular where this may be necessary to ensure safety in association with the upgrading of level crossings as part of Work No. 4C.



- 5.74 Articles 22(3) and (4) provide a process for consulting, notifying and the advertising the exercise of the powers under this Article in advance.
- 5.75 Article 22(5) provides that any order made under this Article by the undertaker has the same effect as if it were made by the traffic authority or local authority where the road is located. This gives the order the necessary status under the Road Traffic Regulation Act 1984 and provides the undertaker with the statutory power to enforce the order.
- 5.76 Article 22(7) confirms that where a traffic authority fails to respond to an application for consent under Article 22(1) within 28 days of receiving the application being made, it is deemed to have given its consent. This is to ensure that the undertaker can impose the TROs as quickly as possible in order to control traffic along the specified roads as necessary during construction and operation. As noted earlier this is considered necessary to enable the undertaker to exercise its powers in an expedient manner.
- 5.77 Article 22 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) as it directly relates to the safe construction of the authorised development.
- 5.78 Article 18 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, Article 40 of the National Grid (Hinkley Point C Connection Project) Order 2016 and Article 61 of the Silvertown Tunnel Order 2018 have broadly equivalent provisions. As these projects all involved works within the street which required the undertaker to obtain powers to control speeds and use for safety and operational reasons.

## **6. Part 4 – Supplemental Powers**

### ***Article 23 (Discharge of water)***

- 6.1 Article 23(1) provides that the undertaker can use (either directly or through additional infrastructure) any existing watercourse, public sewer or drain within or outside the Order limits for the purposes of the authorised development, and may within the Order limits connect into any watercourse, public sewer or drain. Article 23(2) provides that before the undertaker can discharge any water into any watercourse, public sewer or drain, it must first obtain the consent of the owner, who may impose terms and conditions on the discharge. For the avoidance of doubt, this Article does not permit the undertaker to discharge into private watercourses, drains or sewers.
- 6.2 Article 23(4) has been inserted to confirm that if an owner fails to respond to an application for consent to discharge into its watercourse, sewer or drain within 28 days of receiving that application, that owner will be deemed to have given its consent to the discharge. This is considered necessary and appropriate to enable the undertaker to exercise its powers under the Order.
- 6.3 Article 23(5) departs from the Triton Knoll Electrical Systems Order 2016 in that it provides an exemption to the prohibition of any works that damage or interfere with the beds or banks of watercourses. Under Article 23(5), the undertaker may only damage or interfere with the beds and banks of watercourses if such damage or interference is related to the carrying out of the authorised development. This exemption is necessary to ensure that the undertaker can undertake the necessary works to give effect to Article 3 of the Order (Development consent, etc. granted by Order) even where such works may damage or interfere with watercourses. Article 22(5) therefore exempts liability for any offences in respect of watercourses under the Land Drainage Act 1991 and the Water Resources Act 1991 (in respect of watercourses that are main rivers). A similar exemption was included in Article 16 of the North London Heat and Power Generating Station Order 2017.



- 6.4 Article 23(9) clarifies that the right to discharge does not remove the requirement to obtain environmental permits in respect of any discharges to water or groundwater.
- 6.5 This Article is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the 2008 Act.
- 6.6 This power is standard across granted DCOs, for example Article 14 of the Silvertown Tunnel Order, Article 15 of the Wrexham Gas Fired Generating Station Order and Article 12 of the Triton Knoll Electrical System Order 2016.

***Article 24 (Protective work to buildings)***

- 6.7 Article 24 authorises the undertaker to carry out such protective works on any building within the Order limits prior to, during, or up to five years after its first opening for use, or the carrying out of any part of the authorised development in the vicinity of that building. This power is necessary so that the undertaker can ensure that buildings will not be damaged in the course of constructing the authorised development (for example, damage to building foundations as a result of vibrations from blasting works or construction traffic).
- 6.8 In order to undertake protective works, Articles 24(3) and (4) provide that the undertaker may enter and survey any building in order to determine how best to exercise its powers under this Article; and once it has decided, enter the building, land or adjacent land (if necessary) in order to carry out the works. Article 24(3) enables the undertaker, as part of its survey works, to place and leave on any building apparatus and equipment (for example, vibration monitors) that is necessary or expedient for such survey works.
- 6.9 Except in an emergency, the undertaker must give no less than 14 days' notice to owners and occupiers of its intention to enter the land or building and carry out protective works under Article 24(5). Where a notice has been served under Articles 24(5)(a), (c) or (d), the owner or occupier of that land or building may serve a counter-notice under Article 24(6) to dispute the need for the undertaker to undertake the protective works or to enter the land or building.
- 6.10 A counter-notice cannot be served in respect of a notice under Article 24(5)(b) (notice where the undertaker only intends to enter and survey a building or any land within its curtilage) as this would prevent the undertaker from determining whether or not protective works are necessary, and in any event, is unnecessary as if the undertaker determined such works were necessary, it would then have to serve notice on the owner that it intended to enter the building or land to undertake those works. This restriction is considered appropriate to enable the undertaker to efficiently assess buildings within the Order limits to determine whether any works are necessary.
- 6.11 This Article also makes provision in relation to the payment of compensation both in relation to loss or damage caused by the undertaker carrying out the protective works and where, within a specified period, the protective works are shown not to be sufficient.
- 6.12 Article 24 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the 2008 Act.
- 6.13 This power is standard across granted DCOs; however, the drafting for this Article has been based on Article 15 of the Silvertown Tunnel Order 2018, Article 17 of the Keuper Underground Gas Storage Facility Order 2017 and Article 22 of the Hinkley Point C (Nuclear Generating Station) Order 2013.



**Article 25 (Authority to survey and investigate land)**

- 6.14 Article 25 authorises the undertaker to enter onto any land within the Order limits or which may be affected by the authorised development to undertake various survey and investigative works (whether or not that land is within the Order limits), including trial holes. The reason why this power extends beyond the Order limits is that if there is a claim that there has been an impact from the construction works or from the operation of the authorised development, the undertaker needs the ability to investigate such a claim and not be restricted by the extent of the Order limits.
- 6.15 Except in an emergency, the undertaker must give not less than 14 days' notice to the owners and occupiers of the land of its intention to exercise its powers under this Article. Where notice has been provided, the undertaker (or one of its agents) may enter the land, with such necessary equipment and vehicles, to carry out the survey and investigation or to make trial holes.
- 6.16 If the undertaker proposes to make trial holes within the highway boundary or in a private street, it must obtain the prior consent of the highway or street authority. However, Article 25(6) provides that where a street or highway authority fails to respond within 28 days of receiving the application for making trial holes within the highway boundary or in a private street, it is deemed to have given its consent to the works. A deemed approval process is appropriate to enable the undertaker to exercise its powers and undertake works in an efficient and expedient manner.
- 6.17 Article 25(7) provides that section 13 (refusal to give possession to acquiring authority) of the Compulsory Purchase Act 1965 will apply in respect of entry onto, or possession of, land under the Article.
- 6.18 This Article also makes provision in relation to the payment of compensation in relation to loss or damage caused by the undertaker carrying out the protective works.
- 6.19 Article 25 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 12 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the carrying out of surveys or taking soil samples.
- 6.20 Precedent for this Article can be found in other granted DCOs, such as in Article 23 of The Hinkley Point C (Nuclear Generating Station) Order 2013, Article 20 of the M20 Junction 10a Development Consent Order 2017 and Article 17 of the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 (S.I. 2016/73).

**7. Part 5 – Powers Of Acquisition and Possession of Land**

**Article 26 (Compulsory acquisition of land)**

- 7.1 This Article provides the undertaker with the powers to compulsorily acquire any land within the Order limits where that land is either directly required for construction, operation or maintenance of the authorised development, or is required to facilitate or is incidental to those activities. This power is necessary to ensure that the undertaker can have exclusive possession and control of land that is required for the authorised development. ~~Powers of compulsory purchase or over-riding or extinguishment of rights are provided not to be exercisable in respect of the interests in land owned by the parties named in Part 1 of Schedule 15 (Limitations on powers of compulsory acquisition).~~
- 7.2 This Article is subject to Article 29 (time limit for exercise of authority to acquire land compulsorily), Article 30 (compulsory acquisition of rights), Article 33 (acquisition of subsoil only), Article 36 (rights under or over streets), Article 37 (temporary use of land for carrying out the authorised development), and Article 85 (Crown rights). These Articles all impose



restrictions on the exercise of powers under Article 26.

- 7.3 The powers under this Article are provided for under sections 120(3) and (4) and section 122 of the 2008 Act, together with Paragraph 1 of Schedule 5 to the 2008 Act, as they relate to the compulsory acquisition of land.
- 7.4 Precedent for this Article can be found in Article 24 of the Hinkley Point C (Nuclear Generating Station) Order 2013.

***Article 27 (Compulsory acquisition of land – incorporation of the mineral code)***

- 7.5 Article 27 incorporates Parts 2 and 3 of Schedule 2 (Minerals) of the Acquisition of Land Act 1981 to any land acquired by the undertaker that may contain mines or minerals. By incorporating both parts of Schedule 2, this Article prohibits the undertaker from also acquiring rights to any mines underneath the acquired land (unless they are expressly purchased), and provides mine owners with the ability to work the mines and extract minerals, subject to certain restrictions.
- 7.6 Part 3 of the Acquisition of Land Act 1981 sets out a process relating to the working of any mines or minerals underneath the authorised development. It provides that where an owner seeks to work its mine, it must give notice of its intention to the undertaker who must then decide whether or not the works will damage the authorised development. If the undertaker determines that it will cause damage, Article 27 provides it with the power to prohibit the owner from commencing such works, provided that it compensates the owner for its loss.
- 7.7 The ability to restrict third parties from working mines and minerals below the authorised development is appropriate as such activities have the potential to impact adversely on the authorised development (for example, by undermining ground stability) as well as the undertaker's ability to carry out authorised development pursuant to Article 3 (Development consent etc. granted by Order).
- 7.8 This restriction is provided for under sections 120(3) and (4) together with paragraph 4 of Schedule 5 of the 2008 Act, which relates to the carrying out specified mining operations within a specified area.
- 7.9 Precedent for this approach is found in other granted DCOs, such as Article 20 of the Silvertown Tunnel Order 2018.

***Article 28 (Statutory authority to override easements and other rights)***

- 7.10 This Article provides that the undertaker may interfere with rights or breach restrictive covenants in the course of carrying out or using the authorised development (Article 28(1)), rather than automatically cleansing the title to land required for the authorised development of all third party rights. The recourse of an affected land owner in such circumstances is specified by Article 28(4) and 28(5) of the Order to be section 10 of the Compulsory Purchase Act 1965.
- 7.11 We consider that this power (in essence the protection for the undertaker of statutory authority in carrying out or using the authorised development) is sufficient and less draconian than provisions in a number of DCOs which expunge all rights from title, regardless of whether interference or breach of covenant is necessary to execute the project.
- 7.12 The powers under this Article are provided for under sections 120(3) and (4) and section 122, together with paragraph 1 of Schedule 5 of the 2008 Act, as they relate to the compulsory acquisition of land.
- 7.13 This Article replicates Article 25 of The Hinkley Point C (Nuclear Generating Station) Order 2013.



**Article 29 (Time limit for exercise of authority to acquire land compulsorily)**

- 7.14 This Article provides that the undertaker must exercise its power to acquire land or interests within five years of the Order being granted. This ensures that landowners within the Order limits have certainty as to whether or not their land is to be acquired, or rights over their land acquired, within a set period of time.
- 7.15 The powers under this Article are provided for under sections 120(3) and (4) and section 122 of the Planning Act 2008, together with paragraph 1 of Schedule 5 to the 2008 Act, as they relate to the compulsory acquisition of land.
- 7.16 Precedent for this Article can be found in other granted DCOs, such as Article 26 of The Hinkley Point C (Nuclear Generating Station) Order 2013, Article 16 of the East Anglia THREE Offshore Wind Farm Order 2017, Article 23 of the M20 Junction 10a Development Consent Order 2017, and article 20 of the North London Heat and Power Generating Station Order 2017.

**Article 30 (Compulsory acquisition of rights)**

- 7.17 This Article provides the undertaker with the ability to acquire compulsorily ~~both existing and new~~ such rights ~~as well as over the land within the permanent limits or~~ impose restrictive covenants ~~over land. The rights that the undertaker is seeking to acquire are described in the Book of Reference and shown on the Land Plans~~ affecting this land as may be required for any purpose for which that land may be acquired under article 26. Where the undertaker acquires a right over land, it is not required to acquire a greater interest in the land.
- 7.18 Article 30 includes the power to impose restrictive covenants over land so that the undertaker can avoid having to acquire an interest in land where a restrictive covenant can provide the necessary protections. This is a more proportionate exercise of compulsory acquisition powers and would be exercised, for example, in instances where the undertaker has underground infrastructure (for example telecommunications cables) or where the undertaker carries out above-ground mitigation works that cannot later then be changed or removed by the landowner (such as flood mitigation).
- 7.19 Article 30(2) limits the undertaker's acquisition powers, in respect of certain land, solely to rights or restrictive covenants for specific purposes. This means that the undertaker is only able to acquire a right in the land listed in Schedule 15 (Land in respect of which only rights etc. may be acquired) and cannot seek to acquire the underlying land itself.
- 7.20 Article 30(4) introduces Schedule 16 (Modifications of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants) that makes modifications to certain compulsory purchase and compensation enactments to allow landowners to claim compensation where the undertaker has created and acquired new rights over, or imposed restrictions on, land. Without this, the compensation provisions would not apply.
- 7.21 Articles 30(4) and 30(5) provide that where the undertaker acquires a right or imposes a restriction over the apparatus of a statutory undertaker, it may, with the consent of the Secretary of State, transfer that right or benefit to the statutory undertaker. An example of this power would be where the undertaker requires the apparatus to be diverted or relocated for the purposes of the authorised development and acquires rights over the new alignment.
- 7.22 The powers under this Article are provided for under sections 120(3) and (4), together with paragraph 1 of Schedule 5 to the 2008 Act, as they relate to the interference with rights over land. Regarding Article 30(4) of the Order specifically, section 126(2) of the 2008 Act (which allows a DCO to modify the application of compensation provisions) is relevant but note that such provisions are modified in the Order only to the extent necessary to ensure that they apply



properly to the acquisition of rights, and would not affect the amount of compensation which landowners would be entitled to,

- 7.23 This Article follows a similar approach to that taken in, for example, Article 18 of the Wrexham Gas Fired Generating Station Order 2017 and Article 18 of the Triton Knoll Electrical System Order 2016.

***Article 31 (Private rights of way)***

- 7.24 This Article would extinguish all private rights of way over land subject to compulsory acquisition from the date of acquisition of land or on the date of entry, whichever is earlier. Article 31(2) provides that private rights of way over any land that is owned by the undertaker within the Order limits would be extinguished on appropriation of the land by the undertaker for the purposes of the Order. Article 31(3) provides that all private rights of way over land that is temporarily possessed by the undertaker would be suspended and unenforceable.
- 7.25 The Article makes provision in relation to the payment of compensation and there is a saving in the Article in respect of statutory undertakers. Article 31(5) provides that the extinguishment will not apply where the undertaker serves notice to this effect prior to acquiring, appropriating, entering or taking temporary possession of the land in question. The provisions will also not apply where an agreement to this effect is made between the undertaker and the owner of the land benefiting from the private right of way.
- 7.26 The powers under this Article are provided for under sections 120(3) and (4) and section 122 of the Planning Act 2008, together with paragraph 1 of Schedule 5 to the 2008 Act, as they relate to the extinguishment of interests in or rights over land.
- 7.27 Precedent is provided for this Article in Article 28 of The Hinkley Point C (Nuclear Generating Station) Order 2013.

***Article 32 (Application of the 1981 Act)***

- 7.28 Article 32 provides for the application of the Compulsory Purchase (Vesting Declarations) Act 1981 ("**the 1981 Act**"), containing the vesting procedures for land subject to compulsory purchase. It allows the undertaker to choose between the notice to treat procedure or the general vesting declaration procedure set out in the 1981 Act. Vesting declarations allow title in land concerned to pass to the acquirer more quickly than using the notice to treat procedure. They also enable several parcels of land to be acquired at the same time and therefore more efficiently than under the notice to treat procedure. This Article also clarifies that the undertaker will be a body or person authorised to acquire land for the purposes of the vesting declaration procedure.
- 7.29 In particular, the Article modifies specific provisions of the Acquisition of Land Act 1981 so that it is consistent with the five year timeframe under Article 29 of the Order for the exercise of compulsory acquisition powers in relation to the Order land (compared to the usual timeframe of three years for vesting declarations to be executed).
- 7.30 The modification to the Acquisition of Land Act 1981 under Article 32 is provided for under section 120(5)(a) of the 2008 Act which allows a DCO to exclude, modify or apply any statutory provision which relates to any matter for which provision may be made in the DCO (in this case, the compulsory acquisition powers under the Order).
- 7.31 Article 32 of the Order follows the approach in Article 26 of the Silvertown Tunnel Order 2018 and Article 28 of the M20 Junction 10a Development Consent Order 2017.



***Article 33 (Acquisition of subsoil and airspace only)***

- 7.32 Article 33 authorises the undertaker to acquire the subsoil only (as defined in Article 2) and airspace, or rights in it, of any land acquired under Article 26 (Compulsory acquisition of land) instead of acquiring the whole of the land.
- 7.33 Under certain circumstances it may be necessary for the undertaker to only acquire a stratum of land below the surface (for example for the construction of underground services) and therefore Article 33 confirms that where any subsoil is required, the undertaker is not required to acquire any greater interest in any other part of the land (i.e. the sub-surface). The purpose of Article 33 is to minimise so far as is possible the extent of interests the undertaker needs to acquire, resulting in less impact on landowners and lower compensation payments.
- 7.34 The powers under this Article are provided for under sections 120(3) and (4) and section 122 of the Planning Act 2008, together with paragraph 1 of Schedule 5 to the 2008 Act, as they relate to the compulsory acquisition of land.
- 7.35 Precedent for this Article can be found in other granted DCOs, such as article 26 of the Port of Tilbury (Extension) Order 2019, Article 22 of the Wrexham Gas Fired Generating Station Order 2017 and Article 30 of the Hinkley Point C (Nuclear Generating Station) Order 2013.

***Article 34 (Acquisition of part of certain properties)***

- 7.36 This Article makes provision in relation to the acquisition of part of a property in place of section 8(1) of the 1965 Act and contains a procedure enabling the relevant owner in certain circumstances to require the whole to be taken, with disputes being determined by the Lands Chamber of the Upper Tribunal. The acquisition of parts of larger properties may be necessary to carry out the authorised development and this Article is included in relation to such potential acquisitions. This provision is standard in most granted DCOs where powers of compulsory purchase are sought.

***Article 35 (Modification of the 1965 Act)***

- 7.37 Articles 35(2) to 35(5) amend the provisions of the 1965 Act so they are consistent with the terms and timeframes under the Order and the 2008 Act. Article 35(6) makes it clear that the counter-notice process under Part 2 of Schedule 2A of the 1965 Act, introduced by the Housing and Planning Act 2016, does not apply to the temporary possession or use of land under Articles 24, 25, 37, 39 or 45 of this Order. This is because Schedule 2A has two processes for the serving and determination of counter-notices depending on whether or not the acquiring authority is in possession of the land or not. This interpretation clause makes it clear that the undertaker will not be deemed to be in possession of the land where it is exercising its power under Articles 24, 25, 37, 39 or 45.
- 7.38 Article 35 modifies the provisions of Part 1 of the 1965 Act as applied to the Order by section 125 of the 2008 Act. The powers under this Article are provided for under section 120(5)(a) of the 2008 Act which allows a DCO to exclude, modify or apply any statutory provision which relates to any matter for which provision may be made in the DCO (in this case, the compulsory acquisition powers under the Order). Similar provisions can be found in Article 25 of The Silvertown Tunnel Order 2018.

***Article 36 (Rights under or over streets)***

- 7.39 Article 36 provides the undertaker with the right, for the purposes of the authorised development, to occupy the subsoil or airspace of any street within the Order limits without having to acquire any part of, or right in, the street. This exemption does not apply in the case of an underground structure such as a basement or cellar. Where a street is occupied, any



person affected is entitled to compensation (or cost-sharing where another statutory undertaker is involved).

- 7.40 This right is considered necessary as there may be instances where the undertaker occupies the airspace over a street during construction of the authorised development (for example, where the range of a construction crane extends over the boundary of a works site into an adjacent street), or where in installing street lighting, for example, it is necessary to use the subsoil of a street.
- 7.41 Precedent for this Article can be found in other granted DCOs, such as Article 24 of the Meaford Gas Fired Generating Station Order 2016, Article 22 of the Wrexham Gas Fired Generating Station Order 2017, and Article 31 of the Keuper Underground Gas Storage Facility Order 2017.

***Article 37 (Temporary use of land for carrying out authorised development)***

- 7.42 Article 37 provides the undertaker with the power to enter onto, and temporarily occupy, land for the purposes of carrying out various temporary or permanent works on that land (such as removal of buildings and vegetation), without having to acquire a permanent interest in the land. These works, which are included in Schedule 1 of the Order, are necessary to facilitate the construction of the authorised development and have been assessed as part of the Environmental Statement.
- 7.43 Before the undertaker can occupy the land, it must provide the landowner and any occupier with more than 14 days' notice. Following completion of the works, the undertaker may remain on the land for a further period of one year, unless it has agreed to another timeframe with the landowner or it has acquired an interest in the land which allows it to remain for a longer period (i.e. a right of access). Before it gives up its occupation of the land, the undertaker must either acquire the land, or reinstate the land to the satisfaction of the landowner; except that there is a range of works that the undertaker is not required to undertake as part of its reinstatement obligations.
- 7.44 Article 37(1)(a)(i) authorises the undertaker to take possession of the land specified in Schedule 17 (Land of which only temporary possession may be taken) solely for the purposes specified in column (3) of the table in Schedule 17. Article 37(1)(a)(ii) allows the undertaker to occupy any other land within the permanent limits (not just that listed in Schedule 17), provided that the compulsory acquisition process has not begun in relation to such land (i.e. services of notices). All such land is land in respect of which powers of compulsory purchase would apply in any event. This is to provide some flexibility in being able to use any additional land necessary during the course of construction.
- 7.45 The list of works that the undertaker can undertake on any occupied land is set out in Articles 37(1)(b)-(d) and includes removal of buildings and vegetation, removal of electrical lines and plants, structures and apparatus, construction of temporary or permanent works, mitigation works, and works specified in Schedule 17. These are standard provisions in granted DCOs. However, bespoke drafting has been added to Article 37(1)(e) to make clear that land of which temporary possession is taken may be used for the temporary diversion of traffic, PRow or PMA where required in connection with the exercise of powers under Article 14 (permanent stopping up of streets and extinguishment of private means of access) and Article 17 (temporary stopping up of streets and extinguishment of private means of access).
- 7.46 Article 37(2) provides a three-month notice period to align with section 20(3) of the Neighbourhood Planning Act 2017 ("**NPA**"). This is the only insertion within the Order to address the temporary possession provisions (sections 18 – 31) of the NPA as these are not yet in force, and in the absence of any transitional provisions, it is difficult to identify what other modifications would be needed to align with the NPA.



7.47 Article 37(4) provides that before the end of its possession, the undertaker must decide whether it wants to acquire the land. If the land is land that has been identified in Schedule 17 (Land of which only temporary possession may be taken), then the undertaker can only compulsorily acquire a right in the land – whether that be an existing right, the creation of a new right, the imposition of a restrictive covenant, or powers of entry (Article 37(8)). It cannot acquire the land outright. If the land is Order land which has not been subject to a notice to treat or vesting declaration (Article 37(1)(a)(ii)), then the undertaker can either acquire the land or a right in the land.

7.48 Where the undertaker chooses not to acquire the land, it must remove all temporary works and restore the land to the reasonable satisfaction of the owner (unless other arrangements are agreed to, i.e. where the owner wants to retain boundary fencing along highway areas or hard standing). In undertaking restoration, there are certain works listed in Article 37(4) which the undertaker would not be required to undertake. This includes, but is not limited to, restoring the land where any permanent works have been constructed; remediating the land to a condition better than it was originally (for example, remediating the land to remove existing contamination); and removing any strengthening or statutory apparatus placed on the land during construction.

7.49 Article 37(11) confirms that the undertaker can enter and occupy land multiple times over the course of the construction period.

7.50 Article 37(12) confirms that nothing in this article affects any requirement for consent to be obtained from the Secretary of State under section 77 of the School Standards and Framework Act 1998 for change of use of a playing field.

~~7.50~~7.51 Article 37 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the 2008 Act in that powers to use land temporarily for construction purposes are required to facilitate the construction of the authorised development.

~~7.51~~7.52 There is precedent for similar drafting in a number of granted DCOs including Article 33 of The Hinkley Point C (Nuclear Generating Station) Order 2013 and Article 23 of the East Anglia THREE Offshore Wind Farm Order 2017. The provision of a 14 day notice period to land owners has precedent in the recently granted Hornsea Three Offshore Wind Farm Order 2020, among others.

~~7.52~~7.53 ***Article 38 (Time limit for exercise of authority to temporarily use land for carrying out the authorised development)***

~~7.53~~7.54 Article 38(1) provides that the undertaker may not enter land pursuant to the power of temporary possession in Article 37 (Temporary use of land for carrying out authorised development) at any time after five years from the date that the Order is made. However, where temporary possession is taken during this period, the undertaker may retain possession after the expiry of this period.

~~7.54~~7.55 This Article is similar in effect to a number of granted DCOs, including Article 26(2) and 26(3) of The Hinkley Point C (Nuclear Generating Station) Order 2013. Unlike many DCOs, we have provided it as a standalone Article (separate from provisions relating to the time limits for exercising powers of compulsory acquisition) on the basis that this seems clearer than combining the time limits for these two powers in a single Article.

***Article 39 (Temporary use of land for maintaining authorised development)***

~~7.55~~7.56 Article 39 provides that the undertaker may enter onto and temporarily occupy any land within the Order limits that is reasonably required to maintain the authorised development during the occupational period and to construct such temporary works and buildings on the



land, without having to acquire a permanent interest. This Article does not apply to any house, garden (belonging to a house), any other occupied building or highway land.

**7.56****7.57** The undertaker considers the power contained in Article 39 is more appropriate than seeking to obtain permanent interests in land given the temporary nature of these rights and the potential that the undertaker may not need to access any identified land for many years.

**7.57****7.58** "Operational period" is defined in Article 2 as the period of time that the relevant part of the authorised development is in operation after construction. This extension is considered appropriate so that it is clear that the undertaker has these powers for the entire duration of the authorised development. The exercise of the power in this article over the "operational period", as so defined, is necessary for the efficiency and safety of the operation of the authorised development which will require maintenance works throughout the course of its lifetime.

**7.58****7.59** Under this Article, the undertaker is entitled to occupy the land for as long as necessary to carry out the relevant maintenance works. The undertaker must give the landowner and any occupier more than three months' notice and on completion of the maintenance works must remove all temporary works and restore the land to the satisfaction of the landowner.

**7.59****7.60** Article 39(1)(c) includes a right to enter onto any land within the Order limits for the purpose of gaining access where this is reasonably required to maintain the authorised development. For example, there may be land needed for select maintenance works that is only accessible through other land that would have not been needed for construction purposes. This supplemental provision clarifies that the undertaker can secure appropriate access to those parts of the authorised development which need to be maintained, giving full effect to the maintenance powers granted under paragraph (1)(a).

**7.60****7.61** The notice period under Article 36(3) has also been extended from 28 days to 3 months to align with the NPA.

**7.61****7.62** Article 39(4) provides an exception to the notification process in paragraph (3) so that the undertaker is not required to serve notice where it has identified that the safety of the authorised development, the public and/or environment is at risk. This will enable the undertaker to undertake maintenance works as quickly as possible in order to safeguard against such risks.

**7.62****7.63** Article 39 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the 2008 Act in that powers to use land temporarily for maintenance purposes are required to facilitate the maintenance of the authorised development.

**7.63****7.64** Articles of this type are standard in many granted DCOs, including Article 34 of The Hinkley point C (Nuclear Generating Station) order 2013.

#### **Article 40 (Statutory undertakers)**

**7.64****7.65** Article 40 allows the undertaker to acquire land or rights in land owned by statutory undertakers (such as telecommunications and electricity suppliers) or to interfere with their apparatus by removing or repositioning the apparatus within the Order limits.

**7.65****7.66** The general powers in Article 40 are subject to Schedule 18 (Protective Provisions) of the Order which sets out controls and processes around the interference, removal, relocation and/or alteration of a statutory undertaker's apparatus.

**7.66****7.67** The scope of the undertaker's powers under Article 40(1)(b) and (c) include the ability to create and acquire new rights and impose restrictive covenants over the statutory undertaker's land, and extinguish or suspend the rights to alter, renew, or relocate any apparatus (rather



than just remove or reposition these). These powers are consistent with the undertaker's ability to acquire existing rights, and create and acquire new rights, and impose restrictive covenants under Article 30 (compulsory acquisition of rights) of the Order. This power is not restricted to specific apparatus indicated on a plan or Book of Reference as it is impracticable to show all apparatus and therefore a general power is required. This power makes it unnecessary for the undertaker to rely on the processes in sections 271 and 272 of the TCPA to extinguish these rights.

~~7.67~~<sup>7.68</sup> Article 39(1)(d) allows the undertaker to construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers or other bodies within the Order limits.

~~7.68~~<sup>7.69</sup> Article 39(2) has been added to clarify that any apparatus removed or repositioned within a street under aArticle 12 (street works) is also subject to Schedule 18.

~~7.69~~<sup>7.70</sup> Article 40 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 1 of Schedule 5 to the 2008 Act, which states that a DCO can compulsorily acquire land and is also a matter specifically identified in paragraph 14 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the removal, disposal and re-siting of apparatus.

~~7.70~~<sup>7.71</sup> Similar provisions can be found in other granted DCOs such as Article 28 of the Wrexham Gas Fired Generating Station Order and Article 28 of the North London Heat and Power Generating Station Order.

#### ***Article 41 (Apparatus and rights of statutory undertakers in stopped-up streets)***

~~7.71~~<sup>7.72</sup> Article 38 protects the powers and rights of any statutory undertaker whose apparatus is located under, in, on, along or across any street which is stopped up under Article 14 (Permanent stopping up of streets and extinguishment of private means of access). It also provides that, upon the undertaker's reasonable request, the statutory undertaker must remove or alter the position of existing apparatus or provide other apparatus in substitution.

~~7.72~~<sup>7.73</sup> Where a statutory undertaker relocates, removes or substitutes its apparatus in response to a request from the undertaker, the undertaker must reimburse the statutory undertaker's reasonable costs of doing so (except that the undertaker is not required to reimburse the statutory undertaker where the cost of providing apparatus of a better type, larger dimensions or capacity (unless it agrees to) or where the works constitute a major highway, bridge or transport work). A definition of "apparatus" has not been included in this Article as this is already defined in Article 2 of the Order.

~~7.73~~<sup>7.74</sup> Article 41 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 14 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the removal, disposal and re-siting of apparatus.

~~7.74~~<sup>7.75</sup> Precedent for this Article can be found in other granted DCOs, such as in Article 36 of the Hinkley Point C (Nuclear Generating Station) Order 2013, and Article 32 of the Silvertown Tunnel Order 2018.

#### ***Article 41A (Acquisition of wayleaves, easements and other rights)***

~~7.75~~<sup>7.76</sup> This Article gives effect to Schedule 17A, which empowers the undertaker to seek to compulsorily acquire wayleaves, easements or other rights necessary to divert or relocate utilities for the purpose of the authorised development. The drafting itself draws upon the



drafting of equivalent powers which benefit electricity, gas, water, sewerage and telecoms undertakers under the Electricity Act 1989, the Gas Act 1986, the Water Industry Act 1991 and the Communications Act 2003. These existing statutory powers have been adapted only insofar as to enable the undertaker to act on behalf of such statutory undertakers in seeking wayleaves through a compulsory process should they be needed in future. Save for the fact that all consideration or compensation due to land owners is required to be payable by the undertaker (rather than the relevant statutory undertaker), the processes involved are otherwise unchanged, and continue to reflect the statutory requirements and safeguards on the use of such powers. Experience has shown on other major infrastructure projects (such as Hinkley Point C) that statutory undertakers can be reluctant to exercise their own powers to acquire easements or wayleaves even where this would facilitate the undertaker's delivery of a project, due to the time, expense and compensation involved. The proposed Article would provide an option which may be useful in some circumstances to both the undertaker and the relevant statutory undertaker, and may only be exercised where the relevant statutory undertaker gives their consent to the undertaker. It would facilitate the timely and efficient implementation of the authorised development, and the diversion or relocation of utilities where required, both of which are in the public interest.

~~7.76~~<sup>7.77</sup> We are not aware of a precedent for such drafting, however, it is within the scope of section 120(3), being a provision relating to, or to a matter ancillary to, the authorised development.

#### **Article 42 (Recovery of costs of new connections)**

~~7.77~~<sup>7.78</sup> Article 42 provides that any owner or occupier of properties that are affected by the removal of any apparatus under Article 40 (Statutory undertakers) may recover the costs of any new connections from the undertaker.

~~7.78~~<sup>7.79</sup> Article 42(3) clarifies that this Article does not apply to apparatus to which Article 41 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies as separate compensation provisions are provided under those provisions.

~~7.79~~<sup>7.80</sup> This Article is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 14 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the removal, disposal and re-siting of apparatus.

~~7.80~~<sup>7.81</sup> Precedent for this Article can be found in other granted DCOs, such as Article 35 of the M20 Junction 10a Development Consent Order 2017, Article 29 of the North London Heat and Power Generating Station Order 2017, and Article 33 of the National Grid (Richborough Connection Project) Order 2017.

#### **Article 43 (No double recovery)**

~~7.81~~<sup>7.82</sup> This Article provides that compensation will not be paid under both the Order and other compensation regimes in respect of the same loss or damage. The principle of equivalence, namely that a claimant in a compulsory purchase matter will be compensated for no more than and no less than his loss, is long established and no part of the compensation code conflicts with this principle.

~~7.82~~<sup>7.83</sup> The ability to impose this restriction in a DCO is provided for under section 120(5)(a) of the 2008 Act.

~~7.83~~<sup>7.84</sup> This Article is substantively similar to Article 35 of the North London Heat and Power Generating Station Order 2017, Article 48 of the National Grid (Hinkley Point C Connection



Project) Order 2016 and Article 39 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.

#### **Article 44 (Protective provisions)**

~~7.84~~<sup>7.85</sup> Article 44 gives effect to the protective provisions in Schedule 18, which protect the interests of third parties (such as gas, water and electricity undertakers) in the construction, operation and maintenance of the authorised development.

~~7.85~~<sup>7.86</sup> Schedule 18 sets out the procedures that will apply in respect of the removal or retention of apparatus within the Order limits as well as compensation provisions.

~~7.86~~<sup>7.87</sup> Article 44 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 10 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the protection of the property or interest of any person.

~~7.87~~<sup>7.88</sup> The provisions included are substantially identical to protective provisions in a number of granted DCOs.

#### **Article 45 (Use of airspace within the Order limits)**

~~7.88~~<sup>7.89</sup> Article 45 allows the undertaker to enter into and use as much of the airspace over any land within the Order limits as is required for the construction, operation and maintenance of the authorised development or any other ancillary purpose. This right is necessary as landowners also own the airspace above their land and this right would avoid the need to obtain an airspace or over-sailing licence in the event that the undertaker occupies airspace above the Order land that it does not own, or have an interest in (for instance where the arm of a crane extends into the airspace of neighbouring land).

~~7.89~~<sup>7.90</sup> Article 45(2) clarifies that in exercising its rights under the Article, the undertaker will not be required to acquire a greater interest in the land. Under Article 45(3), compensation is payable to any persons affected by the undertaker exercising its powers under this Article.

~~7.90~~<sup>7.91</sup> Article 45 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 2 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the creation of new rights over land.

~~7.91~~<sup>7.92</sup> Article 45 follows Article 25 of the North London Heat and Power Generating Station Order 2017.

### **8. Part 6 – Harbour Powers**

8.1 As part of the Order, the undertaker is seeking various harbour powers, including the power to establish a harbour authority, rather than seeking a separate Harbour Empowerment Order under the Harbours Act 1964. The undertaker requires the establishment of a harbour in order to ensure that it can control navigation to and from the beach landing facility as well as vessel movements used for the construction of the offshore cooling water infrastructure. Management of the harbour area by a harbour master allows controlled co-ordination of vessel movements thereby increasing navigational safety. Powers bestowed on the harbour master would also provide for compulsory instructions to vessels within the harbour area to ensure safe and uninterrupted access to the beach landing facility and construction sites.

8.2 In this regard:

- Section 120(3) and (4) of the 2008 Act provides that a DCO can include any provision relating



to matters ancillary to the development for which consent is granted (in this case, harbour maintenance and management), including matters set out in Schedule 5. These matters include at paragraphs 31 and 32 of Schedule 5 to the 2008 Act "the creation of harbour authority" and/or "changing the powers and duties of a harbour authority".<sup>3</sup>

- Section 120(9) of the 2008 Act provides that to the extent provision for or relating to any matter *may* be included in a DCO, an order under sections 14 and 16 of the Harbours Act 1964 cannot include any such provision.

#### ***Powers sought within this section***

- 8.3 The powers sought in this section are based on those granted in The Hinkley Point C (Nuclear Generating Station) Order 2013 and the Able Marine Energy Park Development Consent Order 2014 (S.I. 2014/2935) and other harbour-related orders. Reliance on these projects is considered appropriate as they also included construction within the marine coastal area and/or the establishment of a harbour authority to maintain and manage the harbour.

#### ***Article 46 (Incorporation of the 1847 Act)***

- 8.4 Article 46 incorporates specific provisions of the Harbours, Docks and Piers Clauses Act 1847 (the "1847 Act"). The 1847 Act sets out common form provisions usually contained in legislation authorising the making and improving of harbours, docks and piers and which can be applied to a harbour if they are adopted in the HEO or other order relating to that harbour. For example, the provisions incorporated by Article 46 permit the undertaker as the harbour authority to appoint a harbour master who can require vessels to be removed for the purpose of repairing the harbour.

- 8.5 The following sections of the 1847 Act have been incorporated because they are needed or are appropriate for the efficient and safe management of the harbour. The following descriptions reflect amendments made to certain provisions by Article 46(2) – (10):

- Section 28 which provides an exemption for certain service vessels from any control or regulation imposed by the 1847 Act.
- Section 35 which makes it an offence for masters to fail to report arrival of the vessel within 24 hours after arrival within the limits of the harbour, dock, or pier of any vessel liable to a penalty not exceeding level 1 on the standard scale (currently £200).
- Section 37 which requires masters to provide the name of the consignee of goods to be unshipped, a copy of the bill of lading or, if only part of the cargo is intended to be unshipped, an account in writing of the goods to be unshipped, within 12 hours of arrival of the vessel. If the harbour master so requires, the master must also give 12 hours' notice of the time at which cargo is intended to be unshipped.
- Section 38 which makes it an offence for master of a vessel to give no account, or a false account, of goods to be unshipped, liable to a penalty not exceeding level 3 on the standard scale (currently £1,000).
- Section 39 which makes it an offence for shippers to give no account, or a false account, of goods intended to be shipped, liable for to a penalty not exceeding level 3 on the standard scale.
- Section 51 which gives the undertaker the power to appoint, and from time to time remove, such harbour master as they think necessary.
- Section 54 which makes it an offence for the harbour master or his assistants who exercise their powers of authorities without reasonable cause or in an unreasonable or unfair manner, liable to a penalty not exceeding level 1 on the standard scale.



- Section 55 which makes it an offence for a person to give or offer any sum of money or anything, by way of reward or bribe to any harbour master or any officer employed in or about the harbour, dock, or pier, liable to a penalty of level 2 on the standard scale.
- Section 56 which gives the harbour master the power to remove any wreck or other obstruction to the harbour, dock or pier or the approaches to them, including floating timber that impedes navigation, and reclaim the expense of doing so from the owner. It gives the harbour master the power to detain, and sell as necessary, such wreck or timber to secure such expenses in the event of non-payment.
- Section 57 which gives the harbour master the power to remove any unserviceable vessel altogether from the harbour and summarily recover the expenses of doing so from the owner of such vessel.
- Section 58 which gives the harbour master the power to remove vessels from the harbour, dock or pier as he sees fit and recover the expenses of doing so from the master of such vessel.
- Section 61 which makes it an offence for vessels to be improperly moored, liable to a penalty not exceeding level 1 on the standard scale.
- Section 62 which makes it an offence for a person to wilfully unmoor any vessel within the harbour, liable to a penalty not exceeding level 3 on the standard scale.
- Section 63 which makes it an offence for vessels to lie or be moored within prescribed limits without the permission of the harbour master, liable to a penalty not exceeding level 3 on the standard scale and a further sum of £1 for every hour that such vessel remains within the limits after a reasonable time for removing the vessel has expired.
- Section 64 which gives the harbour master the power to remove any vessel for the purposes of repairing, scouring or cleansing the harbour, dock or pier. It makes it an offence for master of a vessel not to remove the vessel within three days after notice in writing from the harbour master, liable to a penalty not exceeding level 1 on the standard scale.
- Section 65 which gives the harbour master the power to remove a vessel if the master of such vessel neglects or refuses to do so in accordance with the notice given under section 64, and recover the expenses of doing so from the owner or master of such vessel, provided that three days' notice of the need for removal has been given.
- Section 69 which gives the harbour master the power to fine any person who has control of combustibles which remain in a place within the harbour after the responsible person has been notified to remove the combustibles.
- Section 73 which makes it an offence for a person to throw or put any ballast, earth, ashes, stones or other thing into the harbour or dock, liable to a penalty not exceeding level 1 on the standard scale.
- Section 74 which makes the owner of a vessel or float of timber answerable to the undertakers for any damage done by such vessel or float of timber, or by any person employed about the same, to the harbour, dock, or pier, or quays or any works connected.
- Section 75 which allows the amount claimed for damages in respect of section 74 to be recovered before two justices if it does not exceed fifty pounds and gives power to the justices to distrain, keep or sell any part of the property if the amount of damages and costs are not paid within seven days after the distress or keeping.



- Section 76 which provides that where the owner of a vessel or float of timber has made payment for damage caused by the wilful or negligent act of another person, that person shall repay the owner with costs.
- Section 78 which requires the undertakers to obtain the written consent of Trinity House to erect any lighthouse or beacon, or exhibit any light, beacon or sea-mark, or to alter any such light.
- Sections 83 and 84 which give the undertaker the power to make, repeal, alter and enforce byelaws. These powers are needed as the 1847 Act allows for a wider range of byelaws to be made than Article 64 of the Order (byelaws).
- Section 90 which provides for the process by which proof may be provided that byelaws were published as required.
- Section 103 which provides that nothing in the 1847 Act exempts the undertakers from the provisions, regulations and conditions of any general Act relating to harbours, docks, piers, ports, harbours, or tidal waters.

8.6 The following operative sections of the 1847 Act have not been incorporated because they are not substantive provisions, because they are provided for or required to be excluded by other legislation or because they have no relevance to the Sizewell C Project. As a result, the non-incorporation of these provisions will not have a practical effect on the carrying out of the Marine Works or the operation of the harbour:

- Section 6 - 13, 20-23, 26, 60, 67, 68, 79, 80, 85, 92, 97, 101 are not relevant to the Sizewell C Project.
- Section 4 relates to the citing of the 1847 Act and is not operative.
- Sections 5, 24, 30, 47, 89, 91, 93 to 96 and 104 have since been repealed and are not relevant.
- Sections 14 -19, 25, 27, 29-34, 36, 40-46, 48 - 50, 81 and 82 relate to the calculation, charging and enforcement of rates by an undertaker on vessels and members of the public. As the undertaker will not be collecting rates, these sections are irrelevant.
- Section 59 and 60 relate to sailing vessels. As the harbour will not be open to the public or used by sailing vessels, this section is irrelevant.
- Section 71 makes it an offence to heat flammable objects, or carry loaded weapons or gunpowder within the harbour without the consent of the undertaker. This section is not appropriate as section 120(8) of the 2008 Act precludes DCOs from creating this kind of offence.
- Sections 52 (Powers of harbour, dock or pier master), 53 (Penalty on shipmasters not complying with directions of the harbour master), 66 (Delivery of cargoes and placing of discharged vessels), 70 (Combustibles to be guarded through the night), 72 (Power to enter a vessel to extinguish a fire), 77 (Power to erect lighthouses and lay down buoys with consent of Trinity House), 86 (Notice of allowance of byelaws to be given in one or more newspapers), 87 (A copy of proposed byelaws to be open to inspection), 88 (Publication of byelaws) 99 (Protection of Crown interests), 100 (nor the rights of the crown as to revenue, &c.) and 102 (Protection Trinity House interests) are not included as these powers are already provided for under this Order, insofar as they are relevant to the Sizewell C Project, or other legislation (such as the Merchant Shipping Act 1995).



- Section 98 which makes it an offence for the undertaker not to keep a copy of the Order has not been included as this Order will be publicly available.

- 8.7 Articles 46(2)-(9) provides for certain provisions and definitions contained in the 1847 Act as they are to be incorporated in the DCO to have effect in a particular way. The practical effect of this provision is to ensure that those definitions from the 1847 Act are appropriately applicable to the DCO and the powers and rights conferred under it.
- 8.8 It is not mandatory to incorporate and exclude certain of the provisions within the 1847 Act but a similar approach was taken in Article 53 of the Hinkley Point C (Nuclear Generating Station) Order 2013.
- 8.9 The provisions in this Article are made pursuant to section 120(5) of the 2008 Act, which allows a DCO to apply, modify or exclude a statutory provision necessary to give effect to the powers in the DCO.

***Article 47 (Further powers as to works and extinguishment of rights)***

- 8.10 Article 47 authorises the undertaker to enclose or reclaim areas of foreshore and seabed and hold and use them, within the limits of deviation, for the construction of the Marine Works. This power is necessary to facilitate the construction of the Marine Works themselves, as well as providing laydown areas.
- 8.11 When the undertaker exercises this power, Article 47(2) provides that any right of navigation or other public rights over that part of the sea and foreshore will be extinguished. The power to extinguish such rights is necessary to control navigation around the Marine Works for safety and security.
- 8.12 Sections 120(3) and (4) and paragraph 2 (creation, suspension, extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement) of Schedule 5 to the 2008 Act allow this power to be included in this Order.
- 8.13 This Article reflects the approach taken in Article 56 of the Hinkley Point C (Nuclear Generating Station) Order 2013. Similar provisions to this Article can be found in other DCOs, such as Article 35 of the Walney Extension Offshore Wind Farm Order 2014 (S.I. 2014/2950) and Article 7 of the Burbo Bank Extension Offshore Wind Farm Order 2014 (S.I. 2014/2594).

***Article 48 (Harbour authority)***

- 8.14 Article 48 establishes the undertaker as the harbour authority for the purposes of the Harbours Act 1964. This Article is necessary to constitute the undertaker as the harbour authority within the harbour limits set out in Article 51 (Limits of harbour) and Schedule 19 (Limits of the Harbour).
- 8.15 As a harbour authority the undertaker has a statutory duty to manage, maintain and improve the harbour.
- 8.16 A harbour authority is necessary for the efficient management and maintenance of the harbour. In its capacity as the harbour authority the undertaker will be able to incorporate byelaws through Articles 46 (Incorporation of the 1874 Act) and 64 (Confirmation of byelaws) to protect the integrity of the harbour and the Marine Works within it.
- 8.17 Article 48 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 31 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the creation of a harbour authority. It is also authorised under section 145 of the 2008 Act.



***Article 49 (Agreements entered into by the undertaker)***

- 8.18 Article 49 provides for agreements or undertakings entered into by the undertaker, in connection with the proposed exercise of its functions as harbour authority, prior to its constitution, to be valid and binding. This Article is needed to give full effect to Article 60 (Permanent lights on Marine Works), and as such can be included in this Order under section 120(5)(c) of the 2008 Act. This Article reflects the wording in Article 9 of the London Gateway Port Empowerment Order 2008.

***Article 50 (Application of Pilotage Act 1987)***

- 8.19 Article 50 establishes the undertaker as a competent harbour authority for the purposes of the Pilotage Act 1987. Competent harbour authority status will enable the undertaker to provide pilotage services within the harbour limits to ensure safety of the harbour in accordance with the Pilotage Act 1987.
- 8.20 Article 50 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is also necessary or expedient to give effect to other provisions in the Order within section 120(5)(c) as it is necessary to define the extent of the undertaker's powers as harbour authority under the Order.
- 8.21 Precedent for this Article can be found in pilotage powers orders, for example in Article 3 of the Yorkshire Ouse (Pilotage Powers) Order 1998 (S.I. 1998/1272) and Article 2 of the Argyll and Bute Council (Pilotage Powers) Order 2007 (Scottish S.I. 2007/3).

***Article 51 (Limits of harbour)***

- 8.22 Article 51 and Schedule 19 together set out the harbour limits within which the undertaker is entitled to exercise its powers.
- 8.23 Article 51 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is also necessary or expedient to give effect to other provisions in the order within section 120(5)(c) as it is necessary to define the extent of the undertaker's powers as harbour authority under the Order.
- 8.24 Article 51 follows the approach taken in Article 58 of the Hinkley Point C (Nuclear Generating Station) Order 2013.

***Article 52 (Application of Marine and Coastal Access Act 2009)***

- 8.25 This Article confirms that the Articles in Part 6 of the Order are subject to the provisions of the deemed marine licence (Schedule 20) and any other marine licence which may be granted in respect of the authorised development.
- 8.26 The Article also clarifies that in the event of any inconsistency between the provisions of the Order and the deemed marine licence, the deemed marine licence will prevail and that nothing in this Order will affect the enforcement provisions in respect of a Marine Licence under the Marine and Coastal Access Act 2009.

***Article 53 (Obstruction of work)***

- 8.27 This Article provides that any person who intentionally obstructs the undertaker (or someone authorised by the undertaker) while it is constructing ~~the two~~ the two beach landing facilities authorised by the Order, or without reasonable excuse interferes with, moves or removes any equipment used in the construction, operation and/or maintenance of the authorised development will be guilty of an offence and liable on summary conviction to a fine. This



provision is needed to ensure that the construction of the authorised development is not obstructed, ensuring construction stays on schedule.

- 8.28 Article 53 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 32B of Schedule 5 to the 2008 Act, which states that a DCO can provide for the creation of offences in connection with various matters.
- 8.29 Article 53 is based on Article 61 of the Hinkley Point C (Nuclear Generation Station) Order 2013 and Article 15 of the London Gateway Port Harbour Empowerment Order 2008.

***Article 54 (Obstruction of officers)***

- 8.30 Article 54 provides that any person who intentionally obstructs a person authorised by the undertaker in connection with the exercise of this Order, unreasonably fails to comply with a requirement properly made by the authorised person, or fails to give the authorised person any information or document that they need to perform their function will be guilty of an offence and liable on summary conviction to a fine.
- 8.31 Article 54 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is also necessary or expedient to give effect to other provisions in the order within section 120(5)(c) as it relates to the operation of the authorised development. The Article creates an offence that falls under the exception set out in section 120(8) of the 2008 Act because it relates to offences created under paragraph 32B of Schedule 5 of the 2008 Act.
- 8.32 Precedent for this Article can be found in Article 48 of the London Gateway Port Harbour Empowerment Order 2008.

***Article 55 – not used***

***Article 56 (Abatement of works abandoned or decayed)***

- 8.33 Article 56 gives the Secretary of State the power to require the undertaker to repair and restore, or to remove and restore, the site of any Marine Work which is abandoned or has fallen into decay. Such a requirement can extend to a work which is partly above and partly below mean high water springs. In default the MMO can undertake the work and recover the costs from the undertaker.
- 8.34 Article 56 is provided for under section 120(3) of the 2008 Act as it relates to the construction and maintenance of the authorised development.
- 8.35 This Article follows Article 63 of the Hinkley Point C (Nuclear Generating Station) Order 2013 and Article 18 of the Swansea Bay Tidal Generating Station Order 2015 (S.I. 2015/1386).

***Article 57 – not used***

***Article 58 – not used.***

***Article 59 – not used***

***Article 60– not used.***

***Article 61 – not used***



***Article 62 (Rights to lease etc.)***

- 8.36 Article 62 gives the undertaker the power to lease or grant rights or interests over land forming part of the harbour. Such a lease may include provisions delegating to the lessee or grantee powers and/or duties under this Order except for specified key functions including powers relating to byelaws, the appointment of a harbour master and the lighting and marking of the harbour.
- 8.37 This Article is provided for under section 120(3) of the 2008 Act as it relates to the construction and maintenance of the authorised development.
- 8.38 This Article follows the approach taken in Article 68 of the Hinkley Point C (Nuclear Generating Station) Order 2013.

***Article 63 (Byelaws)***

- 8.39 Article 63 enables the undertaker to make byelaws for the efficient management, regulation and construction of the authorised development and the efficient management and regulation of the harbour. It also sets out the matters for which byelaws may be enacted. These include the regulation and movement of vessels, unloading of goods, conduct of persons within the harbour and prevention of damage or injury to goods, vehicles, plant, machinery, property or persons.
- 8.40 Under Article 63(3), the byelaws may include provisions making breach of the byelaws a summary offence punishable with a fine not exceeding level 3 on the standard scale.
- 8.41 Article 63 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 32A of Schedule 5 to the 2008 Act, which states that a DCO can provide for the creation of byelaws.
- 8.42 Article 63 is based on Article 69 of the Hinkley Point C (Nuclear Generating Station) Order 2013, as expanded to cover some additional matters listed in Article 60(1) of the draft Wylfa DCO, which also may be necessary for the purpose of the Sizewell C Project. However, the draft Article does not incorporate sub-paragraphs (5)-(13) of Article 60 of the draft Wylfa DCO, as we consider it preferable to set out matters relating to the confirmation of byelaws in a separate Article (Article 64, see below), following the approach in the Hinkley Point C (Nuclear Generating Station) Order 2013.

***Article 64 (Confirmation of byelaws)***

- 8.43 Enactment of the byelaws is subject to confirmation by the Secretary of State under Article 64 and public inspection of the byelaws once confirmed. The procedure for confirming byelaws is modelled on Article 70 of the Hinkley Point C (Nuclear Generating Station) Order 2013.

***Article 65 (Power to make general directions to vessels)***

- 8.44 This Article gives the undertaker the power, as a harbour authority, to make, revoke and amend general directions for regulating vessel movements. The undertaker must consult the Chamber of Shipping and the Royal Yachting Association before making, revoking or amending general directions. The power to make such directions is necessary for the control of navigation around the Marine Works and to ensure their safety and security.
- 8.45 In the event of a breach of a general direction, the harbour master would be able to use Article 69 (failure to comply with directions) in order to fine the offending vessel master. In addition, the harbour master could issue a special direction requiring compliance with the general direction. In default, the remedy under Article 70 (enforcement of special directions) would be available. Non-compliance would also entail civil liability.



8.46 Article 65 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) as it relates to the construction, operation and maintenance of the authorised development.

8.47 This Article follows Article 71 of the Hinkley Point C (Nuclear Generating Station) Order 2013, except that it has been modified to include an additional matter in Article 62(2) and limit consultation to the Chamber of Shipping and the Royal Yachting Association. Other granted DCOs, including Article 16 of the Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016 (Scottish S.I. 2016/156) and Article 18 of the Aberdeen Harbour Revision Order 2016 (Scottish S.I. 2016/414) also follow a similar approach to the one taken in Article 65.

***Article 66 (Publication of general directions)***

8.48 Article 66 provides that, except in an emergency, notice of general directions must be published in a newspaper specialising in shipping news, in a local newspaper circulating in the district of East Suffolk Council, and the directions must be available for public inspection and sale, as well as being advertised on a website controlled by the undertaker. In an emergency, notice of the directions may be given in any manner the undertaker considers appropriate.

8.49 Article 66 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) as it relates to the construction, operation and maintenance of the authorised development.

8.50 This Article is similar to Article 72 of the Hinkley Point C (Nuclear Generating Station) Order 2013, save that an additional need to advertise in a local newspaper is provided for. Precedent for this approach can also be found in Article 17 of the Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016 and Article 6 of the Newhaven Harbour Revision Order 2016 (S.I. 2016/151).

***Article 67 (Power to make special directions to vessels)***

8.51 Article 67 enables the harbour master to give specific directions to specific vessels for specific movements. These differ from general directions which are requirements of general application and so capable of being published in advance. It is usual in modern Harbour Empowerment Orders to include provisions setting out powers to make special directions in updated form rather than relying on the incorporation of section 52 of the 1847 Act. This makes the provisions more accessible both for the harbour master and to harbour users.

8.52 Article 67 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) as it relates to the construction, operation and maintenance of the authorised development.

8.53 Special directions are enforceable under Article 70 (enforcement of special directions). This provision is included in Article 73 of the Hinkley Point C (Nuclear Generating Station) Order 2013. Precedent for this Article can be found in Article 18 of the Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016 and Article 7 of the Newhaven Harbour Revision Order 2016.

***Article 68 (Master's responsibility in relation to directions)***

8.54 Article 68 provides that the responsibility of the master of a vessel is not affected by the giving of a direction.

8.55 Article 68 is a provision relating to, or to matters ancillary to, the authorised development within section 120(5)(c), which enables provisions necessary or expedient for giving effect to any other provision to be included in a DCO.



- 8.56 This Article is identical to Article 74 of the Hinkley Point C (Nuclear Generating Station) Order 2013. Precedent for this Article can also be found in Article 21 of the Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016 and Article 10 of the Newhaven Harbour Revision Order 2016.

***Article 69 (Failure to comply with directions)***

- 8.57 This Article provides that a vessel master who fails without reasonable excuse to comply with a general or special direction will be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 8.58 The right to charge under this Article is provided for under sections 120(3) and (4) together with paragraph 18 and 32B of Part 1 of Schedule 5 of the 2008 Act, which allow for the provisions in relation to charging penalty fares to be included in a DCO.
- 8.59 This Article is similar to Article 75 of the Hinkley Point C (Nuclear Generating Station) Order 2013 except that the fine level has been lowered to Level 3 to align with more recent orders such as Article 8 of the Newhaven Harbour Revision Order 2016.

***Article 70 (Enforcement of special directions)***

- 8.60 Article 70 enables the harbour master, if a special direction is not complied with within a reasonable time, to enforce a special direction by putting persons on board the vessel to carry out the direction, or to otherwise cause the vessel to be handled in accordance with the directions. This power cannot be utilised unless the owner or person appearing to have charge of the vessel owner has received reasonable notice of the boarding, unless there is an emergency. Expenses incurred in enforcing a special direction can be recovered by the undertaker from the owner of the vessel. This Article is an updated version of section 58 of the 1847 Act.
- 8.61 The powers under this Article have been included pursuant to section 120(5)(c) of the 2008 Act, which enables provisions necessary or expedient for giving effect to any other provision to be included in a DCO.
- 8.62 This Article is identical to Article 76 of the Hinkley Point C (Nuclear Generating Station) Order 2013. Precedent for this Article can also be found in Article 20 of the Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016 and Article 9 of the Newhaven Harbour Revision Order 2016.

***Article 71 (Boarding of vessels)***

- 8.63 Article 71 allows any officer duly authorised by the undertaker to inspect a vessel within the harbour limits, for the purpose of any legislation or byelaw relating to the undertaker as harbour authority under this Order, or to prevent or extinguish fire. This power cannot be utilised unless the vessel owner has received reasonable notice of the boarding, unless there is an emergency.
- 8.64 The powers under this Article have been included pursuant to section 120(5)(c) of the 2008 Act, which enables provisions necessary or expedient for giving effect to any other provision to be included in the Order.
- 8.65 This Article is identical to Article 11 of the Comhairle nan Eilean Siar (Various Harbours) Harbour Revision Order 2002 (Scottish S.I. 2002/410).

***Article 72 (Charges)***

- 8.66 Article 72 enables the undertaker to charge for services performed by the undertaker in the exercise and performance of its statutory duties as harbour authority. In addition, it is usual for



harbour authorities to be empowered to make charges for services provided by them in that capacity.

- 8.67 Article 72 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 18 of Schedule 5 to the 2008 Act, which states that a DCO can include provisions relating to charges.
- 8.68 This Article is identical to Article 77 of the Hinkley Point C (Nuclear Generating Station) Order 2013. Precedent can also be found in Article 28 of the Port of Ardersier Harbour Revision Order 2014 (S.I. 2014/224).

***Article 73 (Use of the Beach Landing Facilities)***

- 8.69 This Article provides that the temporary beach landing facilities can only be used for the purposes of, or in connection with, the construction of the authorised development and may only use the permanent beach landing facility for the purposes of, or in connection with, the operation, maintenance and decommissioning of nuclear energy related facilities at Sizewell C.
- 8.70 The powers under this Article have been included pursuant to section 120(5)(c) of the 2008 Act, which enables provisions necessary or expedient for giving effect to any other provision to be included in the Order.
- 8.71 This Article is similar to Article 78 of the Hinkley Point C (Nuclear Generation Station) Order 2013 (in relation to the temporary jetty).

***Article 74 (Saving for Trinity House)***

- 8.72 Article 74 provides that the rights and duties or privileges of Trinity House, the General Lighthouse Authority, are unaffected by this Order.
- 8.73 This Article is identical to Article 39 of the Triton Knoll Electrical System Order 2016 and Article 36 of the East Anglia THREE Offshore Wind Farm Order 2017.

***Article 75 (Deemed marine licence)***

- 8.74 This Article provides that the deemed marine licence set out in Schedule 20 will have effect.

**9. Part 7 - Miscellaneous And General**

***Article 76 (Removal of human remains)***

- 9.1 This Article requires the undertaker, before it carries out any works which will or may disturb any discovered human remains in the specified land, to remove those remains in accordance with the procedure set out in the Article (effectively replacing the licence regime under the Burial Act 1857). This procedure sets out various notification requirements and the process for removing and interring the remains either at the request of a relative or personal representative of the deceased person, or by the undertaker. This Article includes the provisions as to the identification of human remains, processes for their re-interment, and the requirement for the undertaker to pay reasonable expenses of removing and re-interring or cremating any remains so discovered.
- 9.2 The purpose of this Article is to provide an appropriate procedure to be followed in the event unexpected human remains are found anywhere within the Order limits. This is important because of the effect of section 25 of the Burial Act 1857. Section 25 of the Burial Act 1857 makes it an offence for a body or any human remains that have been interred in a place of burial to be removed unless (a) a Court grants a 'faculty', (b) the body or remains are removed



in accordance with the approval of the Care of Cathedrals Measure (No.1), or (c) the body or remains are removed under a licence of the Secretary of State. This latter licensing function is administered by the Ministry of Justice.

- 9.3 Article 76(14) disapplies section 25 of the 1857 Act, but replaces it with the procedure set out in this Article. The procedure set out in Article 76 provides a more streamlined and efficient process for dealing with unexpected human remains than that set out in the Burial Act 1857 and is appropriately applied in this case so that the undertaker can deliver the Sizewell C Project in an efficient manner and the intention of the 2008 Act is not undermined.
- 9.4 Article 76 a provision relating to, or to matters ancillary to, the authorised development within section 120(3) as it relates to the construction of the authorised development and is also provided for under section 120(5)(a) of the 2008 Act.
- 9.5 Precedent for this Article can be found in other granted DCOs, such as in Article 14 of the Triton Knoll Electrical System Order 2016 and Article 20 of the River Humber Gas Pipeline Replacement Order 2016.

***Article 77 (Application of landlord and tenant law)***

- 9.6 Article 77 overrides any statutory provisions relating to landlord and tenant law in so far as they may prejudice the operation of any agreement for leasing the whole or part of the authorised development or any agreement for the construction, maintenance, or operation of the authorised development or any part of it entered into by the undertaker. The purpose of this Article is to safeguard any agreement entered into by the undertaker pursuant to its rights under Article 9(1)(b) (consent to transfer benefit of Order) so that no other enactment or rule of law may modify or frustrate the rights and obligations of the parties under any such lease or agreement.
- 9.7 Powers under this Article are provided for under section 120(5)(a) of the 2008 Act which enables the exclusion of any statutory provisions which relate to any matter provided for under a DCO.
- 9.8 Precedent for the Article can be found in other granted DCOs such as Article 32 of the Wrexham Gas Fired Generating Station Order 2017 and Article 30 of the Meaford Gas Fired Generating Station Order 2016.

***Article 78 (Operational land for purposes of the 1990 Act)***

- 9.9 This Article provides that for the purposes of section 264(3)(a) of the 1990 Act (cases in which the land is to be treated as operational land for the purposes of that Act), development consent granted by the Order is to be treated as a specific planning permission in respect of the land specified, and therefore that land is to be treated as "operational land".
- 9.10 The purpose of this is to ensure that permitted development rights under Part 17 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO") (S.I. 2015/596), apply in relation to the Order land, as these rights do not apply to non-operational land held by a statutory undertaker. This will ensure that the undertaker can undertake permitted development as of right without the need for further consents. It is intended that permitted development rights Part 8, Class B (dock, pier, harbour, water transport, canal or inland navigation undertakings) and Part 15, Class B (electricity undertakers) of the GPDO will also apply to the Order land.
- 9.11 Article 78 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) as it relates to the operation of the authorised development.



- 9.12 Precedent for this Article can be found in other granted DCOs, such as Article 40 of The Hinkley point C (Nuclear Generating Station) Order 2013, Article 51 of the Silvertown Tunnel Order 2018, Article 33 of the Wrexham Gas Fired Generating Station Order 2017 and Article 31 of the Meaford Gas Fired Generating Station Order 2016.

***Article 79 (Felling or lopping of trees and removal of hedgerows)***

- 9.13 Article 79 enables the undertaker to fell or lop trees and shrubs near any part of the authorised development for the purposes of preventing the obstruction or interference with the construction, operation or maintenance, or danger to any users of the authorised development. Provision is included for the payment of compensation for any loss or damage caused and its determination in the event of a dispute.

9.14 Article 79(3) provides that the approval of East Suffolk Council must first be obtained before exercising the powers in this article in respect of any tree outside the Order limits.

~~9.14~~9.15 Article 79(4) provides that the undertaker may, for the purposes of the authorised development, remove any hedgerow within the Order limits, or any "important hedgerows" identified in Schedule 21 (Removal of important hedgerows) of this Order. Paragraph (4) clarifies that, where an undertaker seeks to exercise powers under paragraph (3), it will not be required to obtain consent under the Hedgerows Regulations 1997 (S.I. 1997/1160) ("**Hedgerows Regulations**"). This power is necessary to enable the undertaker to remove any hedgerows or identified important hedgerows that are obstructing or interfering with the construction, operation, maintenance, or the safety of users, of the authorised development (for example, where the hedgerow blocks sightlines from access points within the authorised development). All sections of important hedgerows that are proposed to be removed are shown on the Important Hedgerow removal plans identified in Schedule 21.

~~9.15~~9.16 Article 79(5) makes it clear that nothing in this Article authorises works to any tree subject to a tree preservation order ("**TPO**"). Although no trees that are subject to TPOs have been identified within the Order limits, this provision has been included in the event that one may be identified in future.

~~9.16~~9.17 Article ~~79(7)~~79(8) incorporates the definitions of "hedgerow" and "important hedgerow" from the Hedgerows Regulations 1997.

~~9.17~~9.18 As there are a number of hedgerows and important hedgerows within the Order limits, the powers under this Article are necessary to undertake construction of the authorised development and are provided for under sections 120(3) and (4) together with paragraph 13 of Schedule 5 of the 2008 Act. In addition, the power to disapply the consent requirements under the Hedgerows Regulations is also provided for under section 120(5)(a) of the 2008 Act.

~~9.18~~9.19 Article 79 follows the approach taken in Article 41 of The Hinkley Point C Order 2013, Article 15 of the Brechfa Forest West Wind Farm Order 2013 and Article 31 of the North Wales Wind Farms Connection Order 2016 (S.I. 2016/818).

***Article 80 (Certification of plans, etc.)***

~~9.19~~9.20 Article 80 requires the undertaker to submit copies of specific plans and documents to the Secretary of State to be certified as true copies following the making of the Order. Schedule 22 (Certified Documents) sets out the list of documents and plans that are required to be certified by the Secretary of State under Article 80. This Article provides that any plans and documents that are certified under this Article can be used as evidence in any proceedings.

~~9.20~~9.21 Precedent for the use of this model provision can be found in other granted DCOs, such as Article 35 of the Wrexham Gas Fired Generating Station Order 2017 and Article 44 of the M20 Junction 10a Development Consent Order 2017.



### **Article 81 (Service of notices)**

~~9.21~~<sup>9.22</sup> Article 81 sets out the manner in which notices or other documents required or authorised to be served for the purposes of the Order are to be served. In particular, it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. This Article is necessary as the service of notice provisions under sections 229 and 230 of the 2008 Act would not apply to notices served under a DCO. Article 81 follows the approach taken in Article 44 of the Hinkley Point C (Nuclear Generating Station) Order 2013.

### **Article 82 (Arbitration)**

~~9.22~~<sup>9.23</sup> Article 82 makes provision for differences and disputes arising under any provision of the Order, unless otherwise agreed between the parties, and unless relating to a tribunal proceedings under article 34 (acquisition of part of certain properties) or enforcement under Part 8 of the 2008 Act, to be determined by arbitration. It enables agreement to be reached between the parties as to whom to appoint as the arbitrator or, failing agreement, for the arbitrator to be appointed by the Secretary of State. The Secretary of State is considered to be the appropriate body given that any disputes will relate to a DCO. This arbitration provision does not apply to any of the marine provisions from the 1847 Act that are incorporated into the Order under Article 46 (Incorporation of the 1847 Act) or to Trinity House in its exercise of its statutory functions or as per Article 74. It will also not apply to the Marine Management Organisation or the Secretary of State.

~~9.23~~<sup>9.24</sup> Precedent for this Article can be found in other large infrastructure DCOs, such as Article 34 of the North London Heat and Power Generating Station Order 2017, Article 63 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, Article 32 of the Glyn Rhonwy Pumped Storage Generating Station Order 2017, Article 45 of the Hinkley Point C (Nuclear Generating Station) Order 2013, Article 48 of the Northampton Gateway Rail Freight Interchange DCO and Article 38 of the Norfolk Vanguard Offshore Wind Farm Order 2020.

### **Article 83 (Procedure in relation to certain approvals etc.)**

~~9.24~~<sup>9.25</sup> Article 83 gives effect to Schedule 23 (Procedure for approvals, consents and appeals) to the Order which sets out the procedure to be followed in relation to applications made to a discharging authority for any agreement or approval required by a requirement in the Order.

~~9.25~~<sup>9.26</sup> Paragraph 1(1) differs from the drafting suggested in Article 1(1) in Appendix 1 of PINS' *Advice Note 15: Drafting Development Consent Orders* in that it applies only to approvals required pursuant to requirements, and not to approvals or agreements required pursuant to Articles in the Order. We are content that this is sufficient given that other Articles within the Order in respect of which approvals are to be given are subject to their own deemed approval process (see for example Articles 11, 12 and 17).

~~9.26~~<sup>9.27</sup> Paragraph 1(2) differs from the drafting suggested in Article 1(2) in Appendix 1 of PINS' *Advice Note 15: Drafting Development Consent Orders* in that it a distinction is made between the timescales within which the discharging authority is to make a decision depending on whether the relevant requirements requires the discharging authority to consult with another party (a "requirement consultee"). A longer period of time is allowed for discharge of those requirements which require the discharging authority to engage with a consultee than those which do not (8 weeks as opposed to 6 weeks). Provision is made for extensions of time where further information is requested or where a time extension is agreed with the undertaker.

~~9.27~~<sup>9.28</sup> Paragraph 2 sets out provisions in relation to requests for further information which the discharging authority may wish to make to the undertaker. The drafting substantially replicates the drafting in article 1(2) in Appendix 1 of PINS' *Advice Note 15: Drafting Development Consent Orders*, save that the proposed drafting makes a distinction between cases where there is and



where there is not a duty under the requirement to consult with another party in discharging the requirement. The proposed drafting replicates that in the Hinkley point C (Nuclear Generating Station) Order 2013.

~~9.28~~9.29 Unlike the drafting in Appendix 1 of PINS' *Advice Note 15: Drafting Development Consent Orders* no provisions in relation to fees are proposed. The issue of how the undertaker will fund the necessary planning support within the local planning authority in relation to the Sizewell C project is one which is yet to be resolved, but it is likely that this will be dealt with via a planning performance agreement or Deed of Obligation ~~payments rather~~ payments rather than via drafting in the Order.

~~9.29~~9.30 Paragraph 2 sets out an appeal process which applies to Order Articles as well as requirements. This provides for an appeal process which applies consistently across all approvals and consents. The process substantially replicates the drafting in Appendix 1 of PINS' *Advice Note 15: Drafting Development Consent Orders*.

~~9.30~~9.31 Similar approaches have been taken in Article 47 of the River Humber Gas Pipeline Replacement Order 2016 (S.I. 2016/853), Article 39 of the North Wales Wind Farms Connection Order 2016 and Article 46 of the Hinkley Point C (Nuclear Generating Station) Order 2013.

**Article 84 (Application, exclusion and modification of legislative provisions)**

~~9.31~~9.32 This Article enables the application, exclusion and modification of legislation set out in Schedule 24 (Miscellaneous controls).

~~9.32~~9.33 The power to disapply legislation, including local legislation, is provided for under section 120(5)(a) and (b) of the 2008 Act.

**Article 85 (Crown rights)**

~~9.33~~9.34 Article 85 contains a saving for Crown rights. It protects the Crown's position in relation to its own estates, rights, powers, privileges, authorities and exemptions and ensures that written consent from the Crown is required where any land, hereditaments or rights are to be taken, used, entered or interfered with as a result of granting the Order. It has been included as the Marine Works extend over the seabed owned by the Crown.

**Article 86 (~~Marine enforcement authority~~) – not used**

**Article 87 (Security in respect of the payment of compensation etc.)**

9.35 Article 87 ensures that no powers in Part 5 of the Order (Powers of acquisition and possession of land) can be used until the undertaker has provided appropriate security to the value of £42 million, being the estimated maximum cost of compensation payable for exercise of those powers. Provision is made for the Secretary of State to approve a reduction in the amount of security provided where evidence is provided that the undertaker's liability for compensation has reduced.

9.36 Articles with similar effect have been included within the Swansea Bay Tidal Generation Station Order 2015, Rookery South (Resource Recovery Facility) Order 2013 (S.I. 2013/680), Able Marine Energy Park DCO 2014 and Thorpe Marsh Gas Pipeline Order 2016 (S.I. 2016/297).

~~9.34~~ This Article clarifies that, for the purposes of the 2008 Act, the MMO will be the enforcement authority for any breaches of the DCO below the mean high water spring.



## **10. Schedules**

- 10.1 Schedules 1 to 24 are summarised below.

### ***Schedule 1 – Authorised Development***

- 10.2 Schedule 1 specifies numbered works which comprise the authorised development and other associated development works. For a summary of these works see section 2.3 – 2.15 of this Explanatory Memorandum.
- 10.3 The numbered works should be read alongside the Works Plans. All of the authorised development falls within the definition of a "generating station" for the purpose of sections 14 and 15 of the 2008 Act, or may be lawfully authorised as part of the DCO on the basis that it meets the definition of "associated development" under the 2008 Act and related Guidance. Following the approach taken in The Hinkley Point C (Nuclear Generating Station) Order 2013, we have not sought to specify which elements we consider to be part of the "generating station" and which to be "associated development". We consider that because it is clear that all elements of the proposals put forward are necessary for the construction and operation of a power station it is not material whether they are considered to be part of the generating station or associated development.
- 10.4 Schedule 1 also includes a catch-all provision which sets out a number of minor works that are common to a number of work packages, under the heading "Other Associated Development". These include works such as landscaping and drainage, establishment of construction compounds, vegetation clearance, works to trees, shrubs and hedges and utilities installation.

### ***Schedule 2 – Requirements***

- 10.5 Schedule 2 sets out the requirements that we think are necessary to control the construction, operation and maintenance of the Sizewell C Project. The requirements closely relate to the mitigation set out in the Environmental Statement and ensure that the mitigation relied upon for conclusions of the Environmental Impact Assessment is secured.
- 10.6 The requirements have been drafted taking into account the scale and nature of the Sizewell C Project, the mitigation required to be secured, and lessons learned from Hinkley Point C. It is important that the securing mechanisms for the mitigation are clear and understandable to a multitude of parties who will be responsible for compliance. The length and complexity of the construction project means that for defined requirements the undertaker wants to allow for certain documents, plans or details to be modified, where such changes would not give rise to new or materially different environmental effects to those assessed in the Environmental Statement. Such changes would then only be permitted where approval had first been obtained from the relevant discharging authority. The ability to revise the control documents is considered appropriate to ensure that the Sizewell C Project can respond to changes in construction methodologies or design requirements (in accordance with the parameters).
- 10.7 These requirements are provided for under section 120(1) of the 2008 Act, which enables a DCO to include requirements in connection with the development for which consent is granted.

### **Consolidated requirements**

- 10.8 Unless otherwise specified, the requirements apply to the whole Sizewell C Project. Some requirements, however, are specific to a particular phase of development or a particular development site. In some cases, to ensure a consistency, a requirement applies to a number of similar Works. This approach aims to simplify the interpretation and discharge of requirements. Where Works or phases of the development require specific controls, those have been provided for as standalone requirements.



### Parameters for construction of buildings, structures and works

- 10.9 In order to take account of changes that may arise from complying with the Nuclear Site Licence, or the design development processes, the undertaker proposes a parameter based approach for the construction and operation of the power station.
- 10.10 A parameters (Rochdale Envelope Approach) is proposed for defined elements of the scheme. Maximum heights and siting have been set for buildings, structures and works to allow for an appropriate level of flexibility needed in order to deliver the project, whilst ensuring the Environmental Statement has sufficient information to enable 'the main,' or the 'likely significant' effects on the environment to be assessed and mitigated. These parameters are clearly set out within the Environmental Statement and in the Parameter Plans submitted with the DCO application.
- 10.11 The parameters should be read alongside the limits of deviation in Article 4 and shown on the Work Plans.

### Compliance with control documents

- 10.12 Mitigation measures for the project are contained within specific control documents, which are then secured by requirement, ~~or the~~ or the Deed of Obligation. The control documents include the mitigation measures that the undertaker will be committed to. This approach has sought to provide a clear and logical set of control measures that the teams and contractors who are implementing them can implement, along with providing a clear and enforceable set of controls that the discharging authority and stakeholders can apply during the course of construction. Securing these mitigation measures in control documents also allows the undertaker to include additional explanation about how the measures should be implemented.
- 10.13 The requirements enable revisions to these control documents where this is agreed to by the relevant planning authority, provided such revisions do not give rise to materially new or materially different environmental effects from those assessed. The ability to revise the control documents is considered appropriate to ensure that the Sizewell C Project can respond to changes in construction methodologies or design requirements (in accordance with the parameters).
- 10.14 The control documents which will be certified through the DCO, include:
- **Construction Method Statement ("CMS"):** The CMS sets out the anticipated construction methodologies, works, and machinery that has been assumed for the construction stage at the main development site. The assumed methodologies identified in the CMS have been used to inform of the environmental impact assessment. The construction of the main development site will be undertaken in general accordance with the CMS and the undertaker will be able to deviate from the methodologies identified in the CMS provided there are no materially new or different environmental effects from those assessed.
  - **Approved Plans:** As discussed in relation to Schedule 7, the undertaker will be required to undertake works in accordance with the approved plans unless otherwise agreed pursuant to a particular requirement.
  - **Main Development Site Design and Access Statement (DAS):** The DAS sets out the "detailed design principles" that will guide the undertaker to construct the power station, and illustrative design concepts which demonstrate how the Sizewell C Project could be brought forward in accordance with those principles. It also sets out the parameters and explains how they are intended to operate in practice. Any revised designs for the main development site must be in accordance with the principles set out in the DAS.



- **Associated Development Design Principles:** For each associated development site there are a set of “design principles” that will guide the undertaker to construct and operate each associated development site. The design principles set the overarching principles which the final detailed designs will adhere to. They include principles which have helped to inform the assessment presented in the Environmental Statement including general/masterplanning principles, building design principles, landscape design principles and sustainability design principles. Any revised designs for the associated development sites must be in accordance with these design principles.
- **Code of Construction Practice (CoCP):** The CoCP sets out how construction activities will be managed and controlled in order to deliver the mitigation commitments as set out in the Environmental Statement as well as other assessments undertaken (e.g. Habitat Regulation Assessment). Part A of the CoCP applies to all construction activities undertaken as part of the Sizewell C Project, Part B applies to works on the main development site, and Part C applies to work on the offsite associated development. The CoCP sets out the general and topic-specific measures that have been proposed to avoid and reduce environmental effects. The CoCP will be a certified document and compliance is secured through requirements.
- **Outline Landscape and Ecology management plan (oLEMP):** The oLEMP provides the objectives and general principles for the establishment and longer-term management of the landscape and ecological mitigation proposals identified for the main development site in order to mitigate the adverse ecological effects identified in the Environmental Statement. The oLEMP will be a certified document and a requirement is proposed that requires a landscape and ecology management plan to be prepared setting out the detailed arrangements for long term management.

### **Discharging Requirements**

- 10.15 As the requirements often apply to several Works, the undertaker has the ability to discharge requirements in parts. The discharge of a certain requirement may be required at different times for different Works through the construction programme as new information is delivered and the construction progresses. This allows the undertaker to prioritise discharging certain parts of requirements at the correct time in the construction programme.
- 10.16 The requirements identify different discharging authorities depending on the Works and the nature of the requirement: ESC is the discharging authority in respect of land above the MHWS (except highway works) and the MMO is the discharging authority in respect of land seaward of the MHWS and the Marine Works. In the intertidal area (i.e. between MHWS and MLWS) Article 86 of the DCO clarifies that, for the purposes of the 2008 Act, the MMO will be the enforcement authority for any breaches of the DCO below the mean high water spring. SCC is the discharging authority for highway related works as the highway authority. The process for discharging requirements is set out in Schedule 23.

### **Schedule 3 – Land Plans**

- 10.17 These plans identify the limits of the land to be acquired and used and the individual plots over which the undertaker intends to exercise its compulsory acquisition powers. The plot numbers on the Land Plans relate to the plots contained in the Book of Reference.

### **Schedule 4 – Works Plans**

- 10.18 These plans identify the Order limits for the authorised development identified in Schedule 1 for each of the Works in that Schedule.



***Schedule 5 – Rights of Way Plans***

- 10.19 These plans identify the existing public and private rights of way that may be stopped up or diverted and any new rights of ways or new or improved PMA to be provided, either during construction or operation, pursuant to Articles 14, 17, and 19 of the Order.

***Schedule 6 – Parameter Plans***

- 10.20 These plans identify the zones within which buildings, structures and works identified in the parameter tables in the requirements must be located. They provide an additional layer of control by further controlling where the undertaker can construct certain elements of the Works within the boundaries shown on the Works Plans.

***Schedule 7 – Approved Plans***

- 10.21 These are the detailed design and other plans for which the undertaker is seeking approval through the Order in relation to specific works.

***Schedule 8 – Deemed approval of requirements relating to Sizewell B relocated facilities permissions 1 and 2***

- 10.22 This Schedule lists the requirements relating to the Sizewell B relocated facilities planning permission 1 and the Sizewell B relocated facilities planning permission 2 which are deemed to be discharged in the event of the discharge of corresponding conditions attached to the Sizewell B relocated facilities planning permissions by virtue of the mechanism in Article 5 of the Order.

***Schedule 9 – Streets subject to street works***

- 10.23 This Schedule lists the streets that are subject to street works pursuant to Article 12 of the Order.

***Schedule 10 – Streets to be permanently stopped up, changed in status or private means of access extinguished***

- 10.24 This Schedule sets out the streets, PRoWs or PMAs to be permanently stopped up or changed in status in accordance with Article 14 of the Order and as shown on the Right of Way Plans. It also states whether a substitute street, PRoW or PMA is to be provided and (if so) the extent of that substitute.

***Schedule 11 – Status of footpaths created or improved***

- 10.25 This Schedule sets out the footpaths which will be created or improved pursuant to the powers under the Order and the status they will have following approval by the highway authority in accordance with an agreed footpath implementation plan.

***Schedule 12 – Benefit of permanent private means of access and private rights of way created***

- 10.26 This Schedule sets out new permanent PMAs that may be created by the undertaker by exercise of the powers in Article 16 of the Order for the benefit of certain specified Land Registry titles over other Land Registry titles.

***Schedule 13 – Streets and private means of access to be temporarily closed***

- 10.27 This Schedule sets out the streets, PRoWs or PMAs to be temporarily closed in accordance with Article 17 of the Order and as shown on the Right of Way Plans. It also states whether a substitute street, PRoW or PMA is to be provided and (if so) the extent of that substitute.



***Schedule 14 – Traffic Regulation Measures***

- 10.28 This Schedule identifies those streets that will be subject to permanent and temporary TROs in accordance with Article 22 of the Order and the controls that are sought to be imposed for operational and safety purposes.

***Schedule 15 – Limitation on powers of compulsory purchase***

- 10.29 This Schedule identifies the land within the Order limits which the undertaker only proposes to acquire rights to, rather than acquire outright, under Article 30 of the Order and as shown on the Land Plans.

***Schedule 16 – Modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants***

- 10.30 Schedule 16 relates to Articles 30 of the Order and sets out the proposed modifications to the existing compensation regime for the compulsory acquisition of land. The Schedule clarifies that the existing compensation applies, with the necessary modifications to extend the compensation provisions concerning the compulsory purchase of land and interests generally to compulsory acquisition by the creation of new rights and imposition of restrictive covenants under this Order.

***Schedule 17 – Land of which only temporary possession may be taken***

- 10.31 This Schedule identifies plots of land that the undertaker intends to temporarily possess for the purposes of constructing the authorised development under Article 37 of the Order and as shown on the Land Plans. It also makes clear the purpose for which such temporary possession may be taken.

***Schedule 17A – Acquisition of wayleaves, easements and other rights***

- 10.32 This Schedule makes provision for the undertaker to act on behalf of statutory undertakers in acquiring wayleaves, easements or other rights for the diversion or relocation of electricity, gas, water, sewerage or telecommunication apparatus.

***Schedule 18 – Protective Provisions***

- 10.33 This Schedule details the protective provisions which will apply to [amongst others](#), statutory undertakers with apparatus within the Order limits.

***Schedule 19 – Limits of the harbour***

- 10.34 This Schedule describes the limits of the harbour created by this Order pursuant to Article 51 of the Order.

***Schedule 20 – Deemed marine licence***

- 10.35 This Schedule sets out the terms of the deemed marine licence granted by the Order as provided for by Article 75 of the Order.

**Part 1 – Introduction**

- 10.36 Paragraph 1 (Interpretation) provides the definitions of key terms used in the deemed marine licence. Many of the definitions are identical to the terms in Article 2 of the Order.
- 10.37 Paragraph 2 (Addresses) sets out the correspondence addresses for the MMO.



#### Part 2 – Licensed activities – general

- 10.38 Paragraph 3 confirms that the provisions of section 72 of the Marine and Coastal Access Act 2009 apply to the deemed marine licence [save for section 72\(7\) and 72\(8\)](#).
- 10.39 Paragraph 4 provides that the undertaker is authorised to carry out licensable marine activities which form part of or are related to the marine works, are not exempt from requiring a license pursuant to section 74 of the Marine and Coastal Access Act 2009.
- 10.40 Paragraphs 4 – 6 set out the licensable marine activities which are authorised in relation to the construction, maintenance and operations of specified works and also relating to the ongoing maintenance activities for the marine works.
- 10.41 Paragraph 7 provides that the licensed marine activities may be carried out in the area bounded by the co-ordinates set out in Part 4 of the deemed marine licence.

#### Part 3 – Conditions

- 10.42 Part 3 includes the deemed marine licence conditions that would control licensable works below the mean high water springs.
- 10.43 A summary of the conditions is as follows:
- Paragraph 9 requires the undertaker to report any oil, fuel or chemical spill within the marine environment to the MMO Marine Pollution Response Team as soon as reasonably practicable, but in any event within 12 hours of identification.
  - Paragraph 10 provides that the licensed activity or phase of activity shall not commence until a programme of works for that activity is submitted and approved by the MMO.
  - Paragraph 11 requires the undertaker to submit a detailed method statement to the MMO for approval prior to the commencement of the licensed activity or any phase of activity. The undertaker must use reasonable endeavours to submit the detailed method statement to the MMO at least 6 months before the proposed commencement of the licensed activity or each phase of activity.
  - Paragraph 12 provides that specified notice must be given to the local MMO officer and Trinity House prior to (i) the commencement of any licensed activity or any phase of licensed activity and (ii) following completion of any activity or phase of any activity. Following completion of construction of the marine works, the local MMO officer ~~and~~ [Trinity House and UK Hydrographic Office](#) must be notified within 10 days.
  - Paragraph 13 provides that specified notice must be given to local mariners ~~and~~ [fishermen's organisations and UK Hydrographic Office](#) prior to the commencement of any activity or phase of activity.
  - Paragraph 14 requires the undertaker to provide the MMO with details of agents, contractors and subcontractors engaged in licensed activities and to provide agents, contractors and subcontractors with a copy of the deemed marine licence.
  - Paragraphs 15 - 16 require the undertaker to notify the MMO of any vessel being used to carry on any licensed activity and to provide masters of any vessel with a copy of the deemed marine licence to be held on board the vessel.
  - Paragraph 17 requires the undertaker to consult with ESC and the Environment Agency to submit a Coastal Processes Monitoring and Mitigation Plan to the MMO. The undertaker



shall use reasonable endeavours to submit the plan to the MMO at least 6 months prior to the proposed commencement of any licensed activity.

- Paragraph 18 provides that no licensed activity or any phase of licensed activity will commence until the MMO has approved the Marine Environmental Management Plan in relation to that activity or phase of activity. The undertaker shall use reasonable endeavours to submit the plan to the MMO at least 6 months prior to the proposed commencement of any licensed activity.
- Paragraph 19 requires the undertaker to consult with Historic England to submit a Marine Archaeological Written Scheme of Investigation to the MMO. The undertaker shall use reasonable endeavours to submit the scheme to the MMO at least 6 months prior to the proposed commencement of any licensed activity.
- Paragraph 20 requires the undertaker to submit a Fisheries and Liaison and Coexistence Plan to the MMO for approval. The undertaker shall use reasonable endeavours to submit the plan to the MMO at least 3 months prior to the proposed commencement of any licensed activity.
- Paragraph 21 restricts which chemicals can be used in the construction of licensable activities.
- Paragraph 22 restricts how fuels, lubricants, chemicals and other substances can be stored, handled, transported and used.
- Paragraph 23 is not used.
- Paragraph 24 requires drill or vibro piling to be used as standard and restricts how percussive piling can be used.
- Paragraph 26 sets out the procedure which must be followed if concrete is to be sprayed.
- Paragraph 27 restricts how wastes can be stored.
- Paragraph 28 requires equipment, temporary structures, waste and/or debris associated with a licensed activity to be removed within 6 weeks of completion of the licensed activity or relevant phase of the licensed activity.
- Paragraph 29 restricts the rock material which can be used.
- Paragraph 30 requires suitable construction, loading and screening of any vessels used for rock/shingle transshipment or other delivery operations.
- Paragraph 31 requires the undertaker to ensure that specified tugs are made available to tow barges to sheltered waters in adverse weather conditions.
- [Paragraph 31a requires the undertaker to manage vessels in accordance with the Outline Vessel Management Plan unless otherwise approved by the MMO.](#)
- Paragraphs 32 - 33 set out the procedures to be followed for dropped objects and any rock or sediment material which is misplaced or lost below the mean high water springs.
- Paragraph 34 requires the undertaker to submit a Maintenance Activities Plan to the MMO for approval. The undertaker must use reasonable endeavours to submit (i) the first Maintenance Activities Plan least 6 months before the proposed commencement of the first maintenance activity, (ii) the 5-yearly updates to the Maintenance Activities Plan at least 6 months before such revised plan is required to be put in place; and (iii) any further



Maintenance Activities Plan covering additional activities as soon as possible after the need for such additional activities is identified.

- Paragraph 35 requires that no phase of any dredging activity shall commence until all the activity details for specified works have been approved by the MMO. The undertaker must use reasonable endeavours to submit the activity details to the MMO at least 6 months prior to the proposed commencement of the relevant works.
- Paragraph 36 requires that no dredging or disposal activity for specified works shall commence until a sample plan and sediment sample analysis has been approved by the MMO. The undertaker must use reasonable endeavours to submit the sample plan and sediment sample analysis to the MMO at least 6 months prior to the proposed commencement of the activity.
- Paragraph 37 requires the undertaker to provide dredging and disposal quantities at specified times.
- Paragraph 38 provides for various matters to aid navigation, including the provision of various navigation aids, the ongoing availability of the aids to navigation, and a procedure to be followed where an aid to navigation fails.
- Paragraph 40 in relation to beach landing facilities requires that Work No. 1A(m) and Work No. 1A(bb) shall not commence until specified activity details have, after consultation by the undertaker with ESC, been approved by the MMO. The undertaker must use reasonable endeavours to submit the activity details to the MMO at least 6 months prior to the proposed commencement of the relevant works. There are restrictions on impact piling and requirements to submit details of impact piling to the Marine Noise Registry at specified periods.
- Paragraph 41 in relation to soft coastal defence feature requires that Work No. 1A(n) shall not commence until specified activity details have, after consultation by the undertaker with ESC, been approved by the MMO. The undertaker must use reasonable endeavours to submit the activity details to the MMO at least 6 months prior to the proposed commencement of Work No. 1(A)(n).
- Paragraph 44 in relation to combined drainage outfall requires that Work Nos. 2K and 2L shall not commence until specified activity details have been approved by the MMO. The undertaker must use reasonable endeavours to submit the activity details to the MMO at least 6 months prior to the proposed commencement of Work No. 1(A)(n).
- Paragraph 45 in relation to cooling water intake and outfall heads, shafts and tunnels requires that Work No 2B shall not commence until a *Sabellaria* [reef management and monitoring plan](#) has, following consultation with Natural England, been approved by the MMO. The undertaker must use reasonable endeavours to submit the Sabellaria monitoring plan at least 6 weeks months prior to the proposed commencement of Work No. 2B.
- Paragraph 46 requires that Work Nos. 2A and 2C shall not commence until estimates of the disposal activity details have been submitted to the MMO.
- Paragraph 47 requires that Work Nos. 2A to 2J shall not commence until specified activity details have, following consultation by the undertaker with Natural England and the Environment Agency, been approved by the MMO in respect of the relevant works. The undertaker must use reasonable endeavours to submit the activity details at least 6 months prior to the proposed commencement of the relevant works.
- Paragraph 48 requires that Work Nos. 2B, 2D, 2G and 2H and 2I and 2J shall not commence until specified details for the relevant works have been approved by the MMO.



The undertaker must use reasonable endeavours to submit the details for the relevant works at least 6 months prior to the proposed commencement of the relevant works.

- Paragraph 49 requires that drill arisings from Work Nos. 2B and 2D may only be deposited within the UK marine licensing area at the sites set out in Part 4.
- Paragraph 50 requires that no water abstraction shall commence until ~~an~~ [a fish entrapment and impingement monitoring plan](#) has been submitted to and approved by the MMO in consultation with Natural England and the Environment Agency. The undertaker must use reasonable endeavours to submit the monitoring plan at least 6 months prior to the proposed commencement of water abstraction.
- [Paragraph 51 requires that no water abstraction shall commence until a Smelt Monitoring Plan has been submitted and approved by the MMO in consultation with the Environment Agency.](#)

#### Part 4 – Co-ordinates

- 10.44 Part 4 sets out the grid co-ordinates for the (1) licensable area for construction works, (2) dredge area for Work No 1A (PBLF), (3) dredge areas for Work No 2B (Intake Heads for Unit 1), (4) dredge areas for Work No 2D (Intake Heads for Unit 2), (5) dredge areas for Work No 2F (Outfall Heads), (6) dredge area for Work No 2H (FRR Outfall Head for Unit 1), (7) dredge area for Work No 2J (FRR Outfall Head for Unit 2), (8) dredge area for Work No 2L (CDO Outfall Head) and (9) temporary disposal site.

#### **Schedule 20A – ~~appeal~~ [appeals](#) procedure in relation to deemed marine licence**

- 10.45 This Schedule sets out an appeal procedure which would enable the undertaker to appeal against the refusal or non-determination of requests for consents or approvals by the MMO under the deemed marine licence.

#### **Schedule 21 – Removal of important hedgerows**

- 10.46 This Schedule sets out the important hedgerows within the Order limits that the undertaker proposes to remove during construction, maintenance or operation of the authorised development in accordance with Article 79 of the Order.

#### **Schedule 22 – Certified Documents**

- 10.47 This Schedule sets out all the control documents and plans that will be certified under the Order in accordance with Article 80 of the Order. Revision numbers will be included to ensure that the final versions of each document or plan are clearly identified in the final Order.

#### **Schedule 23 – Procedure for approvals, consents and appeals**

- 10.48 This Schedule sets out the procedures that apply to any approvals, consents and appeals under the requirements in Schedule 2 and various approvals and consents under the Order. This Schedule relates to Article 83 and has been based on the approval and appeal procedures set out in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and the Hinkley Point C (Nuclear Generating Station) Order 2013.

#### **Schedule 24 – Miscellaneous controls**

- 10.49 This Schedule sets out the legislation that will be modified or excluded under Article 84 of the Order.
- 10.50 The following statutes and regulations are proposed to be modified or excluded:



- 10.51 **Highways Act 1980:** Paragraph 2 of Schedule 24 disapplies sections 141, 169, 171A and 173 of the Highways Act 1980. These sections place restrictions on planting in or near carriageways, require licences to construct scaffolding, pay occupation fees, and impose controls on the construction of hoarding. These have been disapplied as they would interfere with the undertaker's carrying out the authorised development and are adequately controlled through other documents such as the Code of Construction Practice, the Main Development Site Design and Access Statement.
- 10.52 **Community Infrastructure Levy Regulations 2010:** Paragraph 3 of Schedule 24 clarifies that, for the purposes of the Community Infrastructure Levy Regulations 2010, any building within the authorised development fall within the exemption under regulation 6 and will not to be considered as "development" for the purposes of levying CIL. The rationale for this disapplication is that the authorised development is in its own right a piece of nationally significant infrastructure, and the undertaker will be obliged to provide all of the mitigatory infrastructure (in the form of transport infrastructure in particular) to mitigate its effects. Therefore, it would not be justifiable for CIL to be charged in respect of the development on top of this, for further infrastructure to mitigate impacts.
- 10.53 **New Roads and Street Works Act 1991:** A number of provisions in Part 3 of the 1991 Act have been disapplied by paragraph 4 of Schedule 24 and will not apply when the undertaker is carrying out street or highway works under the Order. This is considered appropriate as these sections are either not relevant to the authorised development, are managed through either the powers in the Order, the protective provisions relating to apparatus owned by statutory undertakers in Schedule 18 of the Order, or are addressed through the Code of Construction Practice and requirements in Schedule 2 which control how the undertaker carries out the construction of the authorised development and works in streets and highways.
- 10.54 Town and Country Planning Act 1990:**
- 10.54.1 **Section 57(2):** The Order defines certain works as "specific associated development works" (being the temporary 'green rail route', the northern park and ride and the southern park and ride, and the freight management facility). Although these works are temporary in nature, they would be in place for a considerable period of time for the purposes of supporting construction activities. As the sites of these works are intended to revert to their original use following construction, paragraph 5(1) of Schedule 24 clarifies that section 57(2) of the 1990 Act will apply to those works so that planning permission will not be required for the resumption of the purpose for which that land was normally used before the development consent was granted. This will ensure that any subsequent user of those sites is not required to obtain a change of use planning permission to use the site for its previous purpose. Similar provisions are included in the Hinkley Point C (Nuclear Generating Station) Order 2013 and the Hinkley Point C Connection Project Order 2016.
- 10.54.2 **Section 239:** This section has been included in Schedule 24 for the avoidance of doubt and to confirm that any land that is acquired, or in which the undertaker acquires a right, which may consist of a burial ground, or part of a burial ground may still be used by the undertaker for the purposes of the construction, operation or maintenance authorised development. This paragraph is subject to Article 76 (Removal of human remains) which sets out the process for the removal and reinterment of any human remains in or upon the land.
- 10.55 **Control of Pollution Act 1974:** Paragraph 6 of Schedule 24 has been included to ensure that the local planning authority must take into account the thresholds outlined in the Code of Construction Practice before it issues a notice under section 60(5) of this Act. This is appropriate because the thresholds set out in the Code of Construction Practice have been assessed under the Environmental Statement and will be approved through the grant of DCO and should therefore form a material consideration in the issuing of notices under section 60. Paragraph



6(2) also confirms, for the avoidance of doubt, that any underground tunnelling works must be regulated by sections 60 and 61 of the Control of Pollution Act 1974.

- 10.56 **Local Government (Miscellaneous Provisions) Act 1976:** Section 42 of the Local Government (Miscellaneous Provisions) Act 1976 has been disapplied under paragraph 7 of Schedule 24 to avoid any future planning enactments undermining the powers and rights provided to the undertaker under the Order. This provision is included in The Northampton Gateway Rail Freight Interchange Order 2019.