

Vattenfall Wind Power Ltd

Thanet Extension Offshore Wind Farm

Appendix 7 to Deadline 8 Submission: Revised
Draft Development Consent Order

Relevant Examination Deadline: 8

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Revision I

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Revision G	Revised document submitted to the Examining Authority
Revision H	Revised document submitted to the Examining Authority
Revision I	Revised document submitted to the Examining Authority

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2019 No.

INFRASTRUCTURE PLANNING

The Thanet Extension Offshore Wind Farm Order 201X

Made - - - - - ****

Laid before Parliament ****

Coming into force - - - ****

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(a) for an Order under sections 37, 114, 115, 120 and 149A of the Planning Act 2008 (“the 2008 Act”)^(b);

And whereas the application was examined by a Panel appointed as an examining authority by the Secretary of State pursuant to Chapter 4 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010^(c);

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having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74 of the 2008 Act made a report and recommendation to the Secretary of State;

(a) S.I. 2009/2264 as amended by the Localism Act (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 (S.I. 2013/522)

(b) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20)

(c) S.I. 2010/103, amended by S.I. 2012/635

The Secretary of State, having considered the report and recommendation of the Panel, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in its opinion do not make any substantial change to the proposals;

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

The Secretary of State in exercise of the powers conferred by sections 114, 115, 120, and 149A of the 2008 Act makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Thanet Extension Offshore Wind Farm Order and comes into force on [●] 201[●].

Interpretation

2. In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1980 Act” means the Highways Act 1980(c);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

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

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

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

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

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

“the 2008 Act” means the Planning Act 2008(j);

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

(a) 1961 c.33

(b) 1965 c.56

(c) 1980 c.66

(d) 1981 c.66

(e) 1989 c.29

(f) 1990 c.8

(g) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 78(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18)

(h) 2003 (c.21)

(i) 2004 c.20. Section 105 was amended by section 69 of the Energy Act 2008 (c.32)

(j) 2008 c.29. The relevant provisions of the Planning Act 2008 are amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27). Section 149A was inserted by paragraph 4 in Part 1 of Schedule 8 to the Marine and Coastal Access Act 2009 (c.23)

(k) 2009 c.23

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

“access to works plan” means the plan certified as the access to works plan by the Secretary of State for the purposes of this Order;

“ancillary works” means the ancillary works described in Part 2 of **Schedule 1** (ancillary works) and any other works authorised by this Order and which are not development within the meaning of section 32 of the 2008 Act;

“Arbitration Rules” means the rules of procedure that govern a particular arbitration that takes place;

“authorised development” means the development and associated development described in Part 1 of **Schedule 1** (authorised development) and any other development to the extent that this has been assessed in the Environmental Statement, authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“authorised project” means the authorised development and the ancillary works authorised by this Order;

“biogenic reef mitigation plan” means the document certified as the biogenic reef mitigation plan by the Secretary of State for the purposes of this Order;

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

“cable” in respect of any onshore cable includes direct lay cables or cables pulled through cable ducts and in respect of any cable whether onshore or offshore means any Alternating Current (AC) cables and includes fibre optic cables either within the cable or laid alongside, and “cable” means any part of the onshore or offshore elements of the Order limits;

“cable crossings” means the crossing of existing sub-sea cables or pipelines or other existing infrastructure by the inter-array, interconnecting or export cables authorised by this Order together with physical protection measures including concrete mattresses, rock placement or other protection methods;

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

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

“code of construction practice” means the document certified as the code of construction practice by the Secretary of State for the purposes of this Order;

“commence” means: (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for archaeological investigations, pre-construction surveys and monitoring, and seabed preparation and clearance (b) in respect of any other works comprised in the authorised project, any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, environmental surveys, investigations for the purpose of assessing ground conditions, diversion and laying of services, temporary structures or hard standing, the temporary display of site notices or advertisements and the words “commencement” and “commenced” will be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“connection works” means Work Nos. 3A to 16 and any related further associated development in connection with those works;

(a) S.I. 2016/1154

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

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

“deemed generation assets marine licence” means the licence set out in **Schedule 11** (deemed licence under the 2009 Act – generation assets) and deemed by **article 30** (deemed marine licences under the 2009 Act) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“deemed export cable system marine licence” means the licence set out in **Schedule 12** (deemed licence under the 2009 Act export cable system) and deemed by **article 30** (deemed marine licences under the 2009 Act) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“deemed marine licences” means the deemed generation assets marine licence and deemed export cable system marine licence;

“design and access statement” means the document certified as the design and access statement by the Secretary of State for the purposes of this Order;

“discharging authority” means the authority whose approval is required in respect of any details submitted to that authority pursuant to any article or requirement in this Order and the MMO in respect of any conditions contained in Schedule 11 and 12 of this Order;

“draught height” means the distance between the lowest point of the rotating blade of the wind turbine generator and MHWS;

“environmental statement” means the documents listed in Part 1 of **Schedule 13** certified as the environmental statement by the Secretary of State for the purposes of this Order;

“export” means the flow of electricity from a wind turbine generator or offshore substation into a distribution network or transmission system for Great Britain, and “export” also includes the conveying of, or importing of, electricity between the distribution network or transmission system for Great Britain and a wind turbine generator or offshore substation;

“HAT” means highest astronomical tide;

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

“jacket foundation” means a steel jacket lattice-type structure constructed of steel which is fixed to the seabed at two or more points with pin piles or suction caissons and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment, and “discrete jacket foundation types” includes pre-piled or post-piled jackets, three-legged or four legged jackets, or straight or battered leg jackets;

“joint pit” means an excavation, structure, or working area, below ground (or below and above ground within Works No. 4, 7 and 13) formed to enable the jointing of high voltage power cables and fibre optic cables;

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

“land plan” means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

“LAT” means lowest astronomical tide;

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of **Schedule 1** (ancillary works)

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

and any cable or any component part of any wind turbine generator, offshore substation, onshore substation or meteorological mast described in Part 1 of **Schedule 1** (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” is construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

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

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

“meteorological mast” means a mast housing equipment to measure wind speed and other wind characteristics, including a topside housing electrical, communication and associated equipment and marking and lighting;

“MMO” means the Marine Management Organisation;

“monopile foundation” means a steel pile, typically cylindrical, driven or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“offshore archaeological draft written scheme of investigation” means the document certified as the offshore archaeological draft written scheme of investigation by the Secretary of State for the purposes of this Order;

“offshore substation” means a platform attached to the seabed by means of a foundation, with one or more decks, whether open or fully clad, accommodating electrical power transformers, instrumentation, protection and control systems, neutral earthing resistors, reactive compensation, standby electrical generation equipment, fuelling facilities, auxiliary and uninterruptible power supply systems and transformers, accommodation or emergency shelter, craneage, metering stations, meteorological equipment, helicopter landing facilities, messing facilities, potable water storage, black water separation equipment, control hub, drainage facilities, access equipment, J-tubes, marking and lighting and other associated equipment and facilities to enable the transmission of electronic communications and for electricity to be collected at, and exported from, the platform and, depending on the type of substation, low, medium or high voltage switch gear, and AC filters and AC converter with switching devices;

“offshore platform” means any offshore substation;

“offshore works” means Work Nos. 1 to 3B and any ancillary works in connection with those works;

“offshore works plan” means the plan certified as the works plan (offshore) by the Secretary of State for the purposes of the Order;

“onshore cable corridor” means the onshore area in which the cables and fibre optic cables will be located within the Order limits;

“onshore substation” means a compound containing electrical equipment including (but not limited to) power transformers, switchgear, electrical protection equipment devices (disconnectors, circuit breakers), reactive compensation equipment, harmonic filters, cables, lightning protection masts, control buildings, welfare facilities, communications masts, back-up generators, access, fencing, other associated equipment, structures or buildings and, depending on the type of substation, equipment including high voltage switchgears;

“onshore works plan” means the plan certified as the works plan (onshore) by the Secretary of State for the purposes of the Order;

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

“Order limits” means the limits shown on the works plan within which the authorised project may be carried out, whose grid coordinates seaward of MHWS are set out in paragraph 2 of Part 1 of **Schedule 1** (authorised development) of this Order;

“outline landscape and ecological management plan” means the document certified as the outline landscape and ecological management plan by the Secretary of State for the purposes of this Order;

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

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

“permanent structure” means a wind turbine generator, meteorological mast or offshore substation forming part of the authorised project and includes, in each case, its foundations;

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

“pre-commencement works” means archaeological investigations, remedial work in respect of any contamination or other adverse ground conditions, the erection of any temporary fencing or temporary means of enclosure, site clearance and preparation, demolition work and diversion and laying of services, temporary structures or hard standing.;

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

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

“Saltmarsh Mitigation, Reinstatement and Monitoring Plan” means the document certified as the Saltmarsh Mitigation, Reinstatement and Monitoring Plan by the Secretary of State for the purposes of this Order;

“Shipping and Navigation Liaison Plan” means the document certified as the Shipping and Navigation Liaison Plan by the Secretary of State for the purposes of this Order;

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

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

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

“structures exclusion zone” means the area hatched green on the offshore works plan;

“suction caisson” means large diameter steel cylindrical shells which penetrate the seabed assisted by a hydrostatic pressure differential for fixity of the structure it supports;

“temporary stopping up of public rights of way plan” means the plan certified as the temporary stopping up of public rights of way plan by the Secretary of State for the purposes of this Order;

“temporary works area” means a work site associated with the connection works including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, bunded storage areas, areas for welfare facilities including washroom facilities, and temporary fencing or other means of enclosure;

“transition joint bay” means an excavation, structure, or working area above or below ground where the offshore export cables and fibre optic cables comprised in Work No. 4A are jointed to the connection works;

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

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

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

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

“undertaker” means Vattenfall Wind Power Ltd;

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

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

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

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

(2) All distances, directions and lengths referred to in this Order are approximate, save in respect of the parameters referred to in **requirements 2 to 6** in Part 3 of **Schedule 1** (requirements) and **conditions 1 to 4** in Part 4 of the deemed marine licences.

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

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

(5) The expression “includes” may be construed without limitation.

PART 2

Principal Powers

Development consent etc. granted by the Order

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

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Subject to the requirements and conditions in the deemed marine licences, Work Nos. 1 to 3B must be constructed anywhere within the Order limits seaward of MHWS and Work Nos. 4 to 16 must be constructed anywhere within the Order limits landward of MLWS.

Power to construct and maintain authorised project

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

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

Benefit of the Order

5.—(1) Subject to paragraphs (2) and (3), the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (2) below) and such related statutory rights as may be agreed between the undertaker and the transferee, subject to the paragraphs (4) to (9) below;
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (2) below) and such related statutory rights as may be so agreed.

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

- (a) where an agreement has been made in accordance with paragraph (1)(a), transfer to the transferee the whole of the deemed generation assets marine licence or the deemed export cable system marine licence, or both, and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) where an agreement has been made in accordance with paragraph (1)(b), grant to the lessee, for the duration of the period mentioned in paragraph (1)(b), the whole of the deemed generation assets marine licence, or the whole of the deemed export cable system marine licence and such related statutory rights as may be so agreed.

(3) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application and the Secretary of State must provide a response within eight weeks of receipt of the notice.

(4) If the undertaker transfers any or all of the benefit of the provisions of this Order pursuant to paragraph (1) the transferee must not begin to exercise the powers provided within Parts 3, 4, 5 and 6 of this Order in relation to any land unless it has first put in place either—

- (a) a guarantee, which may be given by the transferring undertaker, in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power of compulsory acquisition or temporary possession in relation to that land; or
- (b) an alternative form of security, including a funding agreement between the transferring undertaker and the transferee or the transferee and a third party, for that purpose which has been approved by the Secretary of State.

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

(6) Such guarantee or alternative form of security will have a maximum liability cap of £8,500,000.

(7) Such guarantee or alternative form of security is to be in place until no later than the date on which, if a referral is made to the Tribunal, it could be defended by the undertaker or transferee on the ground that the relevant period for such any claims has expired and the Limitation Act 1980 applies so as to time-bar such claims or such later date as when all such claims validly made have either been settled or determined by the Tribunal.

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

(9) The Secretary of State must consult National Grid before giving consent to the transfer or grant to a person of any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (2) above).

(10) The Secretary of State must determine an application for consent made under this article within a period of eight weeks commencing on the date the application is received by the Secretary of State, unless otherwise agreed in writing with the undertaker.

(11) Where the Secretary of State is minded to refuse an application for consent made under this article and notifies the undertaker accordingly, or the Secretary of State fails to determine the application for consent under this article within the period prescribed in paragraph (10), the undertaker may refer the matter for determination in accordance with **article 36** (arbitration) [appeal the decision in accordance with **Schedule 14** (procedure for appeals)].

(12) Where paragraph (16) applies no consent of the Secretary of State is required under paragraph (1) or paragraph (2).

(13) Where an agreement has been made in accordance with paragraph (1) or (2) references in this Order to the undertaker, except in paragraph (14), (15) or (19), include references to the transferee or lessee.

(14) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) or (2) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(15) Where an agreement has been made in accordance with paragraph (1) or (2)—

- (a) the benefit (“the transferred benefit”) includes any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit resides exclusively with the transferee or, as the case may be, the lessee and the transferred benefit is not enforceable against the undertaker save in the case of a deemed marine licence transferred or granted in respect of any breach of an obligation by the undertaker which occurs prior to such transfer or grant or which occurs as a result of any activity carried out by the undertaker on behalf of the transferee.

(16) This paragraph applies where—

- (a) the transferee or lessee is a person who holds a transmission licence under the Electricity Act 1989; or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claim has been made and has been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of any such claim;
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim;
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable; or
 - (vi) the transferee or lessee is a person within the same group as Vattenfall AB (publ) (a company incorporated in Sweden with Reg. No. 556036-2138, whose registered office is SE-169 92 Stockholm Sweden) under Section 1261 of the Companies Act 2006^(a).

(17) In respect of any transfer or grant of a leasehold interest to a company within the same group as Vattenfall AB (publ) in accordance with paragraph (16)(b)(vi), the undertaker must obtain National Grid’s approval in writing before any such transfer or grant occurs (such approval not to be unreasonably withheld or delayed), and such approval must be given provided that prior to the transfer or grant, the transferee or lessee provides a direct covenant to National Grid to comply with any contractual obligations of the undertaker given to National Grid in respect of that part of the authorised project to be transferred or subject to the grant of a lease.

(a) 2006 c.46.

(18) The provisions of **article 8** (street works), **article 10** (temporary stopping up of streets), **article 17** (compulsory acquisition of land), **article 19** (compulsory acquisition of rights), **article 25** (temporary use of land for carrying out the authorised project) and **article 26** (temporary use of land for maintaining the authorised project) have effect only for the benefit of the named undertaker and a person who is a transferee or lessee and is also—

- (a) in respect of Works Nos. 3A to 16 a person who holds a licence under the Electricity Act 1989; or
- (b) in respect of functions under **article 8** (street works) relating to a street, a street authority.

(19) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State, and if such transfer or grant relates to work or utilisation of powers in the vicinity or the exercise of powers in their area, to the MMO and the relevant planning authority, and if such transfer or grant relates to works or utilisation of powers within 15 metres measured in any direction of apparatus of National Grid, to National Grid.

(20) The notices required under paragraphs (3) and (19) must—

- (a) state—
 - (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
 - (ii) subject to paragraph (21), the date on which the transfer will take effect;
 - (iii) the provisions to be transferred or granted; and
 - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (14), will apply to the person exercising the powers transferred or granted; and
 - (v) except where paragraph (16)(a) or (16)(b) applies confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land.
- (b) be accompanied by—
 - (i) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
 - (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

The date specified under paragraph (20)(a)(ii) must not be earlier than the expiry of five days from the date of the receipt of the notice.

(21) The notice given under paragraph (19) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

Application and modification of legislative provisions

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

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

(2) Section 72(7) of the 2009 Act is modified so as to read for the purposes of this Order only as follows—

- “(7) On an application made by a licensee, the licensing authority which granted the licence—
 - (a) may transfer the licence from the licensee to another person, and
 - (b) if it does so, must vary the licence accordingly.”

(a) SI 1997/1160

(3) The provisions of the Neighbourhood Planning Act 2017^(a) insofar as they relate to temporary possession of land under **article 25** (temporary use of land for carrying out the authorised project) and **article 26** (temporary use of land for maintaining the authorised project) of this Order do not apply to this Order in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project.

Defence to proceedings in respect of statutory nuisance

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

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974^(c); or
 - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in compliance with **requirement 2** (control of noise during operational phase); or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised project.

PART 3

Streets

Street Works

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

- (a) break up or open up the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus under the street;

(a) SI 1997/1160

(b) 1990 c.43. There are amendments to this Act which are not relevant to the Order.

(c) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to the Order.

- (d) maintain apparatus under the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) and (b).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Without limiting the scope of the powers conferred by paragraph (1) but subject to the consent of the street authority, which consent will not be unreasonably withheld, the undertaker may, for the purposes of the authorised project, enter on so much of any other street whether or not within the Order limits, for the purposes of carrying out the authorised development and article 39 (miscellaneous provisions relating to the 1990 Act) will apply.

(4) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(5) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Temporary stopping up of public rights of way

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

Temporary stopping up of streets

10.—(1) Subject to paragraph (4), the undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street within the Order limits and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

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

(3) Without limiting the scope of the powers conferred by paragraph (1) but subject to the consent of the street authority, which consent will not be unreasonably withheld, the undertaker may, for the purposes of the authorised project, enter on so much of any other street whether or not within the Order limits, for the purposes of carrying out the authorised development and **article 36 (arbitration)** will apply.

(4) The undertaker must not temporarily stop up, alter or divert any street without the consent of the street authority which may attach reasonable conditions to any consent.

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

(6) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (3) that street authority is deemed to have granted consent.

Access to works

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

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of **Schedule 4** (access to works); and
- (b) with the approval of the highway authority in accordance with **requirement 17** (highway accesses), form and lay out such other means of access or improve existing means of

access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

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

Agreements with street authorities

- 12.—**(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) any temporary stopping up, alteration or diversion of a street authorised by this Order; or
 - (b) the carrying out in the street of any of the works referred to in **article 8(1)** (street works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Application of the 1991 Act

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

- (a) the carrying out of works under **article 8** (street works); and
- (b) the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under **article 10** (temporary stopping up of streets),

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

(2) The provisions of the 1991 Act are—

- (a) subject to paragraph (3), section 55 (notice of starting date of works);
- (b) section 57 (notice of emergency works);
- (c) section 60 (general duty of undertakers to co-operate);
- (d) section 68 (facilities to be afforded to street authority);
- (e) section 69 (works likely to affect other apparatus in the street);
- (f) section 76 (liability for cost of temporary traffic regulation);
- (g) section 77 (liability for cost of use of alternative route); and
- (h) all provisions of that Act that apply for the purposes of the provisions referred to in subparagraphs (a) to (g).

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

PART 4

Supplemental Powers

Discharge of water and works to watercourses

14.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that

purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain subject to the obtaining of consent and approval respectively pursuant to sub-paragraphs (3) and (4) below.

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

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

(4) The undertaker must not carry out any works to any public sewer or drain pursuant to **article 14(1)** except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of, or construct any works in, under, over or within 8 metres of, any watercourse forming part of a main river, or within 16 metres of a tidally influenced main river without the prior written consent of the Environment Agency.

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

(7) Subject to sub-paragraph (8) below and **Requirement 9**, the undertaker may in connection with the carrying out or maintenance of the authorised project, alter the bed or banks of, and construct works in, under, over or within any watercourse and may divert, alter, interrupt or obstruct the flow of any watercourse within the Order limits.

(8) The undertaker must not—

- (a) undertake any works within 8 metres of, any watercourse forming part of a main river, or within 16 metres of a tidally influenced main river without the consent of the Environment Agency, which must not be unreasonably withheld but may be subject to reasonable conditions; and
- (b) undertake any works to any ordinary watercourse without the consent of the relevant Internal Drainage Board or Kent County Council as the case may be, which must not be unreasonably withheld but may be subject to reasonable conditions.

(9) In this article—

“public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(10) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or paragraph (8) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37), and Section 35(8)(a) of the Competition and Services (Utilities) Act 1992 (c.43) and amended by sections 32 and 42 of, and paragraph 16(2) of Schedule 3 to, the Flood and Water Management Act 2010 (date in force to be appointed see section 49(3)(h)(i)). There are other amendments to this section which are not relevant to this Order.

Authority to survey and investigate the land onshore

15.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project or which may be required as set out in the assessment in the Environmental Statement for the authorised project and—

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

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

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

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

(4) No trial holes may be made under this article —

- (a) in land held by or in right of the Crown without the consent of the Crown.

(5) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

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

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

- (a) under paragraph (5)(a) in the case of a highway authority; or
- (b) under paragraph (5)(b) in the case of a street authority;

that authority is deemed to have granted consent.

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

Public rights of navigation

16.—(1) Subject to paragraphs (2), (4) and (5), the rights of navigation over the places in the sea where any of the permanent structures are located within territorial waters will be suspended.

(2) The undertaker will submit a plan showing the precise locations of each permanent structure to Trinity House, the MCA, the MMO, the Port of London Authority and the Secretary of State—

- (a) in the case of Trinity House, no later than ten weeks prior to the commencement of the works;
 - (b) in all other cases, no later than eight weeks prior to the commencement of the works.
- (3) The plan submitted in accordance with paragraph (2) will be published by the undertaker as required by the Secretary of State.
- (4) The undertaker will exhibit such lights, marks, sounds and signals and other aids to navigation and take such reasonable steps for prevention of danger to navigation caused by the construction of the permanent structures as Trinity House directs.
- (5) Subject to the undertaker complying with paragraph (4), 14 days prior to the commencement of the works, the public right of navigation over the places of the sea where the plan indicates each permanent structure is to be located will be suspended.
- (6) In respect of the location of permanent structures, paragraph (1) will cease to have effect as soon as that permanent structure has been decommissioned and permanently removed, and the relevant rights of navigation will resume.

PART 5

Powers of Acquisition

Compulsory acquisition of land

- 17.—**(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project or to facilitate, or is incidental, to it.
- (2) This article is subject to paragraph (2) of **article 19** (compulsory acquisition of rights) and **article 25** (temporary use of land for carrying out the authorised project).
- (3) The undertaker must not exercise any powers of compulsory acquisition authorised by this Order until it has acquired a legal estate in the seabed in the form of an Agreement for Lease from the Crown Estate for which includes the offshore wind turbine generating station comprised in Work No. 1 and provided the Secretary of State with written evidence of such interest.
- (4) Upon exercising compulsory acquisition powers in respect of parcels 02/65, 02/70, 02/75 and 02/85 as shown on the land plans and having completed Work No. 14, the undertaker must offer back the freehold of those parcels to the previous freeholder at the time that compulsory acquisition powers were exercised, to the extent that the undertaker has—
- (a) acquired the freehold title to undertake Work No.14; and
 - (b) put in place occupational arrangements with the occupiers at the time that compulsory acquisition powers were exercised to provide for their occupation of the reconfigured layout.

Time limit for exercise of authority to acquire land compulsorily

- 18.—**(1) After the end of the period of 5 years beginning on the day on which this Order is made—
- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
 - (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by **article 21** (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).
- (2) The authority conferred by **article 25** (temporary use of land for carrying out the authorised project) ceases at the end of the period referred to in paragraph (1), except that nothing in this

(a) 1981 c.66. Sections 2, 6 and 11 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

19.—(1) The undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under **article 17** (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this article, **article 20** (private rights) and **article 27** (statutory undertakers), in the case of the Order land specified in column (1) of **Schedule 5** (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act, as substituted by paragraph 5 of **Schedule 6** (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires an existing right over land or restrictive covenant under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) **Schedule 6** (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In exercising compulsory acquisition of rights the undertaker must not exercise Right E (as listed in **Schedule 5**) in order to carry out Work No. 16 without having first notified the Secretary of State in writing which one of the three cable option routes to link parcels 02/120 and 02/130 will be required for the authorised project being either parcels 02/124, 02/125, 02/140 and 02/135 (together option 1), parcels 02/122, 02/124, 02/125, 02/140 and 02/135 (together option 2) or parcel 02/121 (option 3) and must thereafter only implement compulsory acquisition of rights over land in respect of that selected option in order to deliver one of option 1, option 2 or option 3 for the cable installation between parcels 02/120 and 02/130.

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

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

Private rights

20.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under **article 17** (compulsory acquisition of land) are suspended and unenforceable or, where so notified by the undertaker to the person with the benefit of such private rights or restrictive covenant, extinguished in so far as in either case their continuance would be inconsistent with the acquisition—

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under

article 19 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

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

whichever is the earliest.

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

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

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or **article 27** (statutory undertakers) applies.

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

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

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

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

the agreement is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

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

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

(3) In section 5B (extension of time limit during challenge)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in **article 18** (time limit for exercise of authority to acquire land compulsorily) of the Thanet Extension Offshore Wind Farm Order 201[X]”.

(4) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.

(5) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(6) All references to the 1965 Act in the 1981 Act will be construed as references to the 1965 Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Application of Part 1 of the Compulsory Purchase Act 1965

22.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified in accordance with paragraphs (2), (3) and (4).

(2) In section 4A(1) (extension of time limit during challenge)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the three year period specified in section 4” substitute “the five year period mentioned in **article 18** (time limit for exercise of authority to acquire land compulsorily) of the Thanet Extension Offshore Wind Farm Order 201[X]”.

(3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “**article 17** (time limit for exercise of authority to acquire land compulsorily) of the Thanet Extension Offshore Wind Farm Order 201[X]”

(4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

- (a) omit paragraphs 1(2) and 14(2); and
- (b) at the end insert—

“PART 4

Interpretation

30. In this Schedule, references to entering on and taking possession of land do not include doing so under **article 25** (temporary use of land for carrying out the authorised development) or **article 26** (temporary use of land for maintaining the authorised development) of the Thanet Extension Wind Farm Order 201[X].”

Acquisition of subsoil only

23.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of **article 17** (compulsory acquisition of land) or **article 19** (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

Rights under or over streets

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

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

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

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

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

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

Temporary use of land for carrying out the authorised project

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

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of **Schedule 7** (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a working site with access to the working site in connection with the authorised project; and
- (e) construct any works, or use the land, as specified in relation to that land of **Schedule 7** (land of which temporary possession may be taken), or any mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of **Schedule 7** (land of which temporary possession may be taken), unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but the undertaker is not required to—

- (a) replace any building, structure, drain or electric line removed under this article;
- (b) remove any drainage works installed by the undertaker under this article; or

- (c) remove any new road surface or other improvements carried out under this article to any street specified in **Schedule 2** (streets subject to street works).

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but the undertaker is not required to replace a building removed under this article.

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

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

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

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

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under **article 19** (compulsory acquisition of rights) to the extent that such land is listed in column (1) of **Schedule 5**; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under **article 23** (acquisition of subsoil only).

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

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

Temporary use of land for maintaining the authorised project

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

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

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

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

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

(4) The undertaker is not required to comply with Paragraph (3) in a case of emergency and if an emergency exists they must—

- (a) give to the owners and occupiers of the land in question notice of its intended entry or (as the case may be) of its having entered onto the land as soon as is reasonably practicable; and
- (b) comply with paragraph (1) so far as is reasonably possible in the circumstances.

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

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

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

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

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

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

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

(12) In this article "the maintenance period", in relation to any part of the authorised project, means the period of 5 years beginning with the date on which the authorised project first exports electricity to the national electricity transmission network.

Statutory undertakers

27. Subject to the provisions of **Schedule 8** (protective provisions) the undertaker may—

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

Recovery of costs of new connections

28.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under **article 27** (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under **article 27** (statutory undertakers), any person who is—

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

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

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

(4) In this paragraph—

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

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6

Operations

Operation of generating station

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

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

Deemed marine licences under the 2009 Act

30. The marine licences set out in **Schedules 11 and 12** are deemed to have been granted under Part 4 of the 2009 Act (marine licensing) for the licensed marine activities set out in Part 3, and subject to the conditions set out in Part 4 of each licence.

PART 7

Miscellaneous and General

Application of landlord and tenant law

31.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

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

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

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

(a) 2003 c.21.

Operational land for purposes of the 1990 Act

32. Development consent granted by this Order is treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Felling or lopping of trees and removal of hedgerows

33.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

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

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

(4) Subject to the consent of the relevant local authority, the undertaker may, for the purposes of the authorised project, remove any hedgerows within the Order limits and remove the important hedgerows as are within the Order limits.

(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997(a).

Trees subject to tree preservation orders

34.—(1) The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order which was made after July 2017 or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

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

- (a) the undertaker must cause no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) does not apply.

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

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

Certification of plans etc.

35.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the documents listed in **Schedule 13** (Documents to be certified) for certification that they are true copies of the documents referred to in this Order.

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

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

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and

(a) S.I. 1997/1160.

- (b) identifies that provision by a number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made;

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

(4) Each programme, statement, plan, protocol or scheme listed in **Schedule 13** must be complied with as certified.

Arbitration

36.—(1) Subject to **Article 39** (Saving provisions for Trinity House), any dispute or decision under any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at **Schedule 9** of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Centre for Effective Dispute Resolution.

(2) The procedure in sub-section (1) does not apply to the discharge of requirements under **Schedule 10**.

Procedure in relation to certain approvals etc.

37.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any agreement or approval required or contemplated by any of the provisions of the Order, such agreement or approval must, if given, be given in writing and not be unreasonably withheld and if no response is received in writing within 28 days, or eight weeks if in accordance with **Schedule 10** of this Order, of the application or request being made, then any such approval is deemed to have been given.

(2) **Schedule 10** (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements 9, 11, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28 and 29 in Part 3 of **Schedule 1** (requirements).

Abatement of works abandoned or decayed

38. Where Work No. 1(a) to (d) and Work No. 2 or any part of those works is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, issue a written notice requiring the undertaker at its own expense to repair and restore or remove Work No. 1(a) to (d) and Work No. 2 or any relevant part of those works, without prejudice to any notice served under section 105(2) of the 2004 Act. The notice may also require the restoration of the site of the relevant part(s) of Work No. 1(a) to (d) and Work No. 2 to a safe and proper condition within an area and to such an extent as may be specified in the notice.

Saving provisions for Trinity House

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

Crown rights

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

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

- (i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land;
 - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
 - (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).
- (2) Consent under paragraph (1) may be given unconditionally or subject to terms and conditions and will be deemed to have been given in writing where it is sent electronically.

Protective provisions

41. Schedule 8 (protective provisions) has effect.

Signed by authority of the Secretary of State for Business, Energy & Industrial Strategy

	<i>Name</i>
Address	Head of [Unit]
Date	Department for Business, Energy & Industrial Strategy

SCHEDULES

SCHEDULE 1

Article 2

Authorised Project

PART 1

Authorised Development

1. A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act which is located in the North Sea approximately 8km (at the closest point) from the Kent coast, comprising—

Work No. 1—

- (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 340 MW comprising up to 34 wind turbine generators each fixed to the seabed by one or more of the following foundation types: monopiles; three legged jackets on either pin piles or suction caisson anchoring; four legged jackets on pin piles or suction caisson anchoring and their associated foundations, fitted with rotating blades and situated within the area shown on the works plan and further comprising (b) to (e) below;
- (b) up to one meteorological mast fixed to the seabed within the area shown on the works plan by an associated foundation (namely one or more of the following: monopiles; three legged jackets on either pin piles or suction caisson anchoring; four legged jackets on pin piles or suction caisson anchoring and their associated foundations);
- (c) up to one Floating Lidar Device (FLD) and up to one wave buoy fixed to the seabed within the area shown on the works plan;

- (d) inter-array subsea cables and fibre optic cables within the area shown on the works plan between the wind turbine generators and between the wind turbine generators and Work No.2 including one or more cable crossings;
- (e) and associated development within the meaning of section 115(2) of the 2008 Act comprising—

Work No. 2 – An offshore substation fixed to the seabed within the area shown on the works plan by associated foundations, namely one of the following: monopiles; three legged jackets on either pin piles or suction caisson anchoring; four legged jackets on pin piles or suction caisson anchoring and their associated foundations.

Work No. 3 – Up to four offshore subsea export cables and fibre optic cables to export electricity and transmit electronic communications from the offshore substation or wind farm array to the shore along routes within the Order Limits seaward of MLWS including one or more cable crossings as shown and demarcated on the works plan.

Intertidal Area

Work No. 3A – Up to four subsea export cables and fibre optic cables to export electricity and transmit electronic communications from the offshore substation or wind farm array to the shore between Work No. 3 and Work No. 3B seaward of MHWS at Pegwell Bay and where required works to facilitate horizontal directional drilling.

Work No. 3B—

- (a) In the event that export cables are required to cross the seawall by horizontal directional drilling, onshore connection works, including up to four export cables and fibre optic cables to export electricity and transmit electronic communications from the offshore substation or wind farm array to the shore; and
- (b) In the event that the export cables cross the seawall by trenching, onshore connection works consisting of:
 - (i) up to four export cables and fibre optic cables to export electricity and transmit electronic communications from the offshore substation or wind farm array to the shore;
 - (ii) a temporary cofferdam to facilitate the installation of cables through the sea wall; and
 - (iii) partial demolition of the sea wall and subsequent reinstatement of the sea wall on its existing alignment.

In the county of Kent, district of Thanet

Work No. 4— Onshore connection works within Pegwell Bay Country Park consisting of up to four cable circuits and communications cables laid underground or from Work No. 3A to Work No. 5 running in a south westerly direction including a temporary works area.

Work No. 4A— Four subsea export cables and fibre optic cables connecting to up to four transition joint bays located below ground to facilitate onshore connection works within Pegwell Bay Country Park.

Work No. 4B— Four subsea export cables and fibre optic cables to facilitate onshore connection works within Pegwell Bay Country Park, and where required works to facilitate horizontal directional drilling.

Work No. 5— A new temporary construction compound within Pegwell Bay Country Park including a new temporary vehicular access and temporary widening and upgrades to an existing vehicular access from Sandwich Road and modifications to the junctions of access and Sandwich Road.

Work No. 6— Upgrading and widening of existing access from Sandwich Road.

In the county of Kent, district of Thanet and district of Dover

Work No. 7— Onshore connection works consisting of up to four cable circuits and communication cables laid underground from Work No. 4 to Work No. 13 running in a south westerly direction and crossing the Minster Stream.

Work No. 8— A new temporary vehicular access track running in a north easterly direction from Sandwich Road to Work No. 7 including permanent modifications to the junction of the new vehicular access track and Sandwich and the permanent installation of an access gate.

Works No. 9— The construction of a temporary works area.

Work No. 10— Temporary widening and upgrade of an existing private road running in an easterly direction from Sandwich Road.

Work No. 11— The construction of a temporary works area.

In the county of Kent, district of Dover

Work No.12— Temporary widening and upgrade of an existing private road running in an easterly direction off the roundabout on the A256.

Work No. 13— A new onshore substation including a new vehicular access track from the private road off the eastern exit of the roundabout on the A256 and including onshore connection works to the extent that they connect to the onshore substation and onward connection works.

Work No. 14— Works to facilitate the construction of the onshore substation (Work No. 13) including a new temporary construction compound, relocation of Ministry of Justice vehicle holding area, removal and relocation of associated structures, vehicle parking, access ways, CCTV, security fencing, portable buildings and utilities connections.

Works No. 15— Substation landscaping and biodiversity enhancement area, including planting and hardstanding.

In the county of Kent, district of Thanet and district of Dover

Work No. 16— Onshore connection works, consisting of up to two cable circuits and communications cables laid underground from Work No. 13 to the National Grid 400kV substation at Richborough Energy Park running in a westerly direction crossing under the A256 and then in a northerly direction including temporary works areas and modifications and upgrades to the existing Richborough Energy Park access off the A256.

Further Works

In connection with Work Nos. 1 to 3 and above the MLWS to Work No. 3A and 3B to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which would not give rise to any materially new or materially different environmental effects from those assessed by the environmental statement including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection measures such as the placement of rock or concrete mattresses, with or without frond devices;
- (c) the removal of material from the seabed required for the construction of Work Nos. 1 to 3B and the disposal of inert material of natural origin within the Order limits produced during construction drilling, seabed preparation for foundation works, cable installation preparation such as sandwave clearance, boulder clearance and pre-trenching and excavation of horizontal directional drilling exit pits; and
- (d) removal of static fishing equipment;

and in connection with such Work Nos. 4A to 16 to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which would not give rise to any materially new or materially different environmental effects from those assessed by the environmental statement including:

- (a) works to secure vehicular or pedestrian means of access including the creation of new tracks, footpaths, and widening, upgrades, creation of bell mouths, creation of temporary slip roads and improvements of existing tracks, footpaths and roads;
- (b) car parking areas, welfare facilities, temporary offices and workshops;
- (c) bunds, embankments, swales, landscaping, boundary treatments and works to mitigate any effects of the construction, operation or maintenance of the authorised project;
- (d) spoil and equipment storage;
- (e) jointing pits, manholes, marker posts, link boxes, earthing and other works associated with laying ducts and cables and fibre optic cables and pulling cables and fibre optic cables through cable ducts;
- (f) water supply works, foul drainage provision, surface water management systems, temporary drainage during installation of ducts, cables and fibre optic cables and at the onshore project substation and culverting;
- (g) works of restoration;
- (h) fencing or other means of enclosure;
- (i) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses located above the level of mean high water springs (MHWS);
- (j) working sites and mobilisation areas in connection with the construction of the authorised development;
- (k) bowzers, septic tanks, generators and standby generators;
- (l) works for the provision of apparatus including cabling, water and electricity supply works;
- (m) habitat creation and archaeological works; and
- (n) such other works, apparatus, plant and machinery of whatever nature as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project.

2. The grid coordinates for that part of the authorised project which is seaward of MHWS are specified below—

Current Cable Corridor

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	51° 19' 22.104" N	1° 22' 19.234" E	25	51° 17' 56.042" N	1° 27' 8.120" E
2	51° 19' 24.560" N	1° 25' 18.600" E	26	51° 17' 58.278" N	1° 26' 14.982" E
3	51° 19' 38.342" N	1° 26' 20.851" E	27	51° 18' 46.821" N	1° 23' 12.172" E
4	51° 19' 36.695" N	1° 29' 9.324" E	28	51° 18' 52.541" N	1° 22' 57.260" E
5	51° 19' 43.095" N	1° 29' 43.272" E	29	51° 18' 52.380" N	1° 22' 16.747" E
6	51° 20' 14.158" N	1° 29' 56.342" E	30	51° 19' 5.968" N	1° 21' 41.601" E
7	51° 20' 37.339" N	1° 32' 25.827" E	31	51° 19' 6.137" N	1° 21' 41.660" E

8	51° 21' 43.399" N	1° 33' 16.785" E	32	51° 19' 7.241" N	1° 21' 41.937" E
9	51° 23' 14.222" N	1° 34' 45.212" E	33	51° 19' 8.626" N	1° 21' 42.154" E
10	51° 23' 56.937" N	1° 34' 47.892" E	34	51° 19' 10.154" N	1° 21' 42.190" E
11	51° 23' 22.059" N	1° 35' 37.689" E	35	51° 19' 10.485" N	1° 21' 42.234" E
12	51° 23' 7.263" N	1° 35' 36.158" E	36	51° 19' 10.812" N	1° 21' 42.364" E
13	51° 22' 46.107" N	1° 35' 21.177" E	37	51° 19' 11.135" N	1° 21' 42.594" E
14	51° 21' 27.502" N	1° 34' 2.352" E	38	51° 19' 12.534" N	1° 21' 44.013" E
15	51° 21' 15.621" N	1° 34' 0.605" E	39	51° 19' 12.994" N	1° 21' 44.441" E
16	51° 20' 34.127" N	1° 33' 19.312" E	40	51° 19' 12.995" N	1° 21' 44.448" E
17	51° 20' 18.448" N	1° 33' 21.294" E	41	51° 19' 18.092" N	1° 22' 2.648" E
18	51° 20' 8.251" N	1° 32' 54.654" E	42	51° 18' 25.807" N	1° 27' 42.379" E
19	51° 19' 48.474" N	1° 30' 48.676" E	43	51° 19' 5.515" N	1° 27' 38.768" E
20	51° 19' 41.109" N	1° 30' 36.146" E	44	51° 19' 6.818" N	1° 26' 4.122" E
21	51° 19' 17.641" N	1° 30' 27.963" E	45	51° 18' 53.151" N	1° 25' 40.946" E
22	51° 19' 3.953" N	1° 29' 13.879" E	46	51° 18' 38.800" N	1° 25' 25.266" E
23	51° 19' 4.793" N	1° 28' 30.568" E	47	51° 18' 22.978" N	1° 26' 25.434" E
24	51° 18' 2.205" N	1° 28' 36.240" E			

Array Area

<i>Point No</i>	<i>Latitude (DAS)</i>	<i>Longitude (DAS)</i>	<i>Point No</i>	<i>Latitude (DAS)</i>	<i>Longitude (DAS)</i>
1	51° 25' 33.041" N	1° 32' 30.523" E	8	51° 27' 38.815" N	1° 38' 7.249" E
2	51° 27' 40.652" N	1° 32' 53.134" E	9	51° 27' 38.873" N	1° 36' 4.331" E
3	51° 28' 13.973" N	1° 33' 56.681" E	10	51° 26' 34.609" N	1° 34' 10.445" E
4	51° 28' 19.898" N	1° 41' 47.085" E	11	51° 24' 9.695" N	1° 37' 39.727" E
5	51° 27' 7.350" N	1° 43' 30.472" E	12	51° 24' 3.060" N	1° 41' 16.044" E
6	51° 22' 44.323" N	1° 41' 30.864" E	13	51° 25' 27.649" N	1° 41' 16.429" E
7	51° 23' 2.085" N	1° 36' 6.194" E			

PART 2

Ancillary Works

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

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and maintenance of the authorised development;
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works;
- (c) temporary works for the benefit or protection of land or structures affected by the authorised development; and
- (d) such other works as may be necessary or expedient for the purpose of or in connection with the construction or use of the authorised development and which would not give rise to any materially new or materially different environmental effects from those recorded in the environmental statement.

PART 3

Requirements

Time limits

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

Detailed offshore design parameters

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

- (a) exceed a height of 250 metres when measured from HAT to the tip of the vertical blade;
- (b) exceed a height of 140 metres to the height of the centreline of the generator shaft forming part of the hub when measured from HAT;
- (c) exceed a rotor diameter of 220 metres;
- (d) be less than 480 metres from the nearest wind turbine generator in either direction perpendicular to the approximate prevailing wind direction (crosswind) or be less than 716 metres from the nearest wind turbine generator in either direction which is in line with the approximate prevailing wind direction (downwind); and
- (e) have a draught height of less than 22 metres from MHWS.

(2) References to the location of a wind turbine generator in paragraph (1) above are references to the centre point of that turbine.

3.—(1) The total number of offshore substations forming part of the authorised project must not exceed one, and the total number of meteorological masts must not exceed one and the total number of Floating Lidar Devices must not exceed one, and the total number of wave buoys must not exceed one.

(2) The dimensions of the offshore substation forming part of the authorised project (excluding towers, helipads, masts and cranes) must not exceed 55 metres in height when measured from HAT, 70 metres in length and 50 metres in width.

(3) Each meteorological mast must not exceed a height of 140 metres above HAT.

(4) Each meteorological mast must not have more than one supporting foundation.

4.—(1) The total length of the cables and the volume of their cable protection must not exceed the following—

<i>Work</i>	<i>Length</i>	<i>Cable protection</i>
Work No. 1 (inter array)	64 kilometres	34,750m ³
Work No. 3, 3A, 4A, 4B (export cable)	120 kilometres	145,000m ³

(2) In relation to a wind turbine generator, meteorological mast or an offshore substation, each jacket foundation must not have—

- (a) a width spacing between its legs at the level of the seabed which is more than 40 metres;
- (b) a pile diameter which is more than four metres in the case of pin piles or a suction caisson diameter which is more than 20 metres;
- (c) more than one pile per leg or more than one suction caisson per leg; and
- (d) more than four legs.

(3) In relation to a wind turbine generator, meteorological mast or an offshore substation each monopile foundation forming part of the authorised development must not have a diameter which is more than 10 metres.

5. The total amount of scour protection for the wind turbine generators, meteorological masts and offshore substations forming part of the authorised development must not exceed 1,191,187.2m³.

6.—(1) None of the infrastructure listed in Work No.1 (a) to (c), Work No. (2), nor Ancillary Works (a), (c) and (d) may be installed within the structures exclusion zone, whose coordinates are specified below—

Structures Exclusion Zone

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	51° 28' 13.973" N	1° 33' 56.681" E
2	51° 28' 15.183" N	1° 35' 29.471" E
3	51° 27' 23.628" N	1° 33' 46.501" E
4	51° 24' 45.426" N	1° 33' 51.671" E
5	51° 23' 1.317" N	1° 36' 20.336" E
6	51° 23' 2.085" N	1° 36' 6.194" E
7	51° 25' 33.041" N	1° 32' 30.523" E
8	51° 27' 40.652" N	1° 32' 53.134" E

(2) No part of any wind turbine generator, including its blades, may oversail into the structures exclusion zone.

Aviation safety

7. The undertaker must exhibit and maintain such lights, with such shape, colour and character as are required by the Air Navigation Order 2016(a), and as otherwise directed as necessary for aviation safety by the Defence Infrastructure Organisation Safeguarding and the CAA.

Offshore decommissioning

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

(a) S.I. 2016.765.

Stages of authorised development onshore

9.—(1) The connection works may not be commenced until a written scheme setting out the stages of the connection works has been submitted to the relevant planning authority.

(2) The undertaker must notify the relevant planning authority that it is commencing work for each and every stage of the connection works in writing at least five days prior to commencement of that stage.

Approvals of documentation in relation to Works 3A and 3B

10.—(1) Each programme, statement, plan, protocol or scheme required to be approved in relation to Works 3A and 3B may, where required, be approved by more than one statutory body in whole or in part.

(2) If all or any part of such document referred to in paragraph (1) requires approval by more than one discharging authority, those discharging authorities will consult with one another prior to giving their requisite approvals in accordance with the provisions of this Order.

Detailed design parameters onshore

11.—(1) The total number of buildings housing the principal electrical equipment for the onshore substation comprised in Work No. 13 must not exceed one.

(2) Construction works for the building referred to in paragraph (1) above must not commence until details of the layout, scale and external appearance of the same have been submitted to and approved by the relevant planning authority. The onshore substation must be carried out in accordance with the approved details.

(3) Any details provided by the undertaker pursuant to paragraph (2) must accord with the design and access statement.

(4) The building comprised in Work No. 13 must not exceed a height of 14 metres above existing ground level and external electrical equipment comprised in Work No. 13 must not exceed a height of 12.5 metres above existing ground level.

Landfall works notification

12. No part of Work No. 3B may commence until written notification is provided to the relevant planning authority confirming which one option of Work No. 3B(a) or 3B(b) will be constructed. The notification must include the anticipated timing of the proposed works being undertaken.

Saltmarsh mitigation, reinstatement and monitoring plan

13. The undertaker must undertake appropriate surveys at the locations for Works No. 3A and 3B in order to monitor the impact of development authorised by the Order within any areas of saltmarsh, as provided for within the saltmarsh mitigation, reinstatement and monitoring plan.

Access management strategy

14.—(1) No stage of the connection works within Pegwell Bay Country Park or potentially affecting a Public Right of Way may commence until for that stage an access management strategy (which must accord with the outline access management strategy) has been submitted to and approved by the relevant planning authority;

(2) The access management strategy must be implemented as approved.

Onshore substation landscaping

15.—(1) Prior to the construction of above ground permanent infrastructure for the onshore substation a substation landscaping management scheme (which accords with the outline

landscape and ecological management plan) will be submitted to and approved by the relevant planning authority.

(2) The substation landscaping management scheme must include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting, including any trees;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) proposed and existing functional services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports;
- (h) details of existing trees to be retained with measures for their protection during the construction period;
- (i) retained historic landscape features and proposals for restoration, where relevant;
- (j) implementation timetables for all landscaping works;
- (k) maintenance of the landscaping, including irrigation arrangements in relation to Work No. 13; and
- (l) soil retention, handling and protection.

(3) The substation landscaping management scheme must be implemented as approved.

Implementation and maintenance of landscaping

16.—(1) All landscaping works must be carried out in accordance with the relevant recommendations of appropriate British Standards.

(2) Any tree or shrub planted as part of an approved landscaping management scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

Highway accesses

17.—(1) No stage of the connection works may commence until for that stage written details of the siting, design, and layout for any new, permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, has been submitted to and approved by the relevant highway authority.

(2) The highway accesses for that stage must be constructed or altered and the works described in paragraph (1) above must be carried out, in accordance with the approved details before they are brought into use for the purposes of the authorised development.

Construction Environmental Management Plan

18.—(1) No stage of the connection works may commence until for that stage a construction environmental management plan (which must accord with the code of construction practice) has been submitted to and approved by the relevant local planning authority.

(2) The construction environmental management plan must contain details of—

- (a) relevant health, safety and environmental legislation and compliance;
- (b) local community liaison responsibilities;
- (c) site security;

- (d) biosecurity measures;
- (e) lighting;
- (f) soil management;
- (g) dust control measures;
- (h) flood risk and surface water management;
- (i) waste management; and
- (j) any water crossings not requiring consent pursuant to the Land Drainage Act 1991.

(3) The construction environmental management plan must be implemented as approved in relation to the relevant stage of the construction works.

Temporary fencing and other means of enclosure

19.—(1) No stage of the connection works may commence until for that stage written details of proposed temporary fences or other means of temporary enclosure of the connection works for that stage have been submitted to and approved by the relevant planning authority. The fencing and other means of enclosure must be installed as approved.

(2) All construction sites must remain securely fenced in accordance with the approved details at all times during construction of the relevant stage of the connection works.

(3) Any temporary fencing must be removed on completion of the relevant stage of the connection works.

(4) Pre-commencement works relating to the erection of any temporary means of enclosure or temporary fencing must only take place in accordance with the written details of the proposed temporary fences or other means of temporary enclosure of the connection works for that stage, which has been submitted to and approved by the relevant local authority.

Onshore substation surface water and drainage management plan

20.—(1) Construction of any part of the onshore substation at Work No. 13 may not commence until a surface water and drainage management plan has, after consultation with the relevant drainage authority, been submitted to and approved by the relevant planning authority.

(2) The surface water and drainage management plan must include a surface water drainage scheme for Work No. 13, which is based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development.

(3) The surface water and drainage management plan must be implemented as approved.

Contaminated land and groundwater plan

21.—(1) No stage of the connection works may commence until for that stage a contaminated land and groundwater plan (which must accord with the code of construction practice) to mitigate the potential for release of contaminants within the Order limits has, after consultation with the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The contaminated land and groundwater plan must be implemented as approved.

(3) Pre-commencement works relating to any required remedial work in respect of any contamination or other adverse ground conditions must only take place in accordance with the contaminated land and groundwater plan for that stage, which has been submitted to and approved by the relevant local authority.

Construction noise and vibration management plan

22.—(1) No stage of the connection works may commence until a noise and vibration management plan (which must accord with the code of construction practice) has for that stage been submitted to and approved by the relevant planning authority.

- (2) The noise and vibration management plan must set out the particulars of—
 - (a) the construction works, and the method by which they are to be carried out;
 - (b) the noise attenuation measures to be taken to minimise noise resulting from the construction works, including any noise limits; and
 - (c) a scheme for monitoring the noise during the construction works to ensure compliance with the noise limits and effectiveness of the attenuation measures.
- (3) The noise and vibration management plan must be implemented as approved.

Construction traffic management plan

23.—(1) No stage of the connection works may commence until a construction traffic management plan which must accord with the code of construction practice has for that stage been submitted to and approved by the relevant highway authority.

- (2) The construction traffic management plan must set out the particulars of—
 - (a) scheduling and timing of movements;
 - (b) temporary warning signs and traffic control; and
 - (c) construction vehicle routeing.
- (3) The construction traffic management plan must be implemented as approved.

Onshore archaeological written scheme of investigation

24.—(1) No stage of the connection works may commence until for that stage an onshore archaeological written scheme of investigation (which accords with the onshore archaeology written scheme of investigation) has, after consultation with Historic England and Kent County Council, been submitted to and approved by the relevant planning authority.

(2) In the event that site investigation is required, the scheme must include details of the following—

- (a) an assessment of significance and research questions;
- (b) the programme and methodology of site investigation and recording;
- (c) the programme for post investigation assessment;
- (d) provision to be made for analysis of the site investigation and recording;
- (e) provision to be made for publication and dissemination of the analysis and records of the site investigation;
- (f) provision to be made for archive deposition of the analysis and records of the site investigation; and
- (g) nomination of a competent person or organisation to undertake the works set out within the onshore archaeology written scheme of investigation.

(3) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

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

(5) Pre-commencement works for any stage of the connection works relating to archaeological investigations must only take place in accordance with a specific onshore archaeological written scheme of investigation that has been submitted to and approved by the relevant local authority.

(6) Any pre-commencement works of an intrusive nature must not be undertaken prior to the approval of the onshore archaeological written scheme of investigation submitted in accordance with sub-paragraph (5).

Landscape and Ecological Mitigation plan

25.—(1) No stage of the connection works may commence until for that stage a written landscape and ecological mitigation plan (which accords with the outline landscape and ecological management plan) reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement has been submitted to and approved by the relevant planning authority in consultation with Natural England.

(2) The landscape and ecological mitigation plan must include an implementation timetable and must be carried out as approved.

Seasonal restriction in respect of non-breeding waterbirds

26.—(1) The undertaker must ensure that no percussive piling activity within Work Nos. 3A and 3B takes place between 1st October to 31st March (inclusive) of any year.

(2) The undertaker must ensure that no construction works or planned operation and maintenance works take place within Work Nos. 3A and 3B between 1st October to 31st March (inclusive) of any year.

Construction hours

27.—(1) Construction work for the connection works must only take place between 0700 hours and 1900 hours Monday to Saturday, with no activity on Sundays or bank holidays, except as specified in paragraph (2).

(2) Outside the hours specified in paragraph (1), construction work may be undertaken for essential activities including but not limited to:

- (a) continuous periods of operation that are required as assessed in the environmental statement, such as concrete pouring, drilling and pulling cables (including fibre optic cables) through ducts;
- (b) fitting out works associated with the onshore substation comprised within Work No. 13;
- (c) delivery to the connection works of abnormal loads that may cause congestion on the local road network;
- (d) connection works carried out on the foreshore;
- (e) daily start up or shut down;
- (f) works required that may necessitate the temporary closure of roads;
- (g) electrical installation;
- (h) non-destructive testing; and
- (i) emergency works.

(3) Outside the hours specified in paragraph (1), construction work may be undertaken in relation to any horizontal directional drilling in accordance with the assessment undertaken within the environmental statement.

(4) All construction work undertaken in accordance with paragraph (2)(a) to (2)(i) and (3) must be agreed with the relevant planning authority in writing in advance, and must be carried out within the agreed time.

Control of noise during operational phase

28.—(1) Work No. 13 must not commence operation until an operational noise management plan including monitoring, attenuation and any applicable noise limits for the use of Work No. 13 has been submitted to and approved by the relevant planning authority.

(2) The operational noise management plan must be implemented as approved and maintained for the duration of use of the authorised development.

Onshore decommissioning

29.—(1) Within six months of the cessation of commercial operation of the connection works an onshore decommissioning plan must be submitted to and approved by the relevant planning authority.

(2) The decommissioning plan must be implemented as approved.

Pilotage displacement

30.—(1) No part of the authorised development may commence within the shaded area north of a line as shown on the works plan (offshore) located between point 1 and point 2, which is an east-west line from the most north westerly wind turbine generator of the existing Thanet Offshore Wind Farm to the centre point of the NE RACON buoy, unless the Secretary of State has first approved a scheme of mitigation.

(2) The scheme of mitigation will take into account any evidence provided by the Port of London Authority to the undertaker.

(3) The scheme of mitigation referred to in this requirement shall be implemented as approved.

(4) In this requirement:

“scheme of mitigation” means a compensation mechanism to mitigate any relocation of pilotage caused by the charted relocation of the Tongue Deep Water Diamond recognised by UK Hydrographic Office following the approval of final wind turbine generator positions and other evidenced physical displacement of pilotage.

“relocation” means $(C) = (B) - (A)$ and where (C) is a positive integer; and where (A) is the measurement of the centre point of the nearest Thanet Offshore Wind Farm WTG to the centre point of the current DWD; where (B) is the measurement of the centre point of the nearest Thanet Offshore Wind Farm WTG to the centre point of the relocated DWD; and where (C) is the change in distance or alignment in nautical miles caused by the authorised development between the current and relocated DWD.

“evidence base” means an objective body of evidence providing details of the historic use of the Tongue Deep Water Diamond known to date, which will then be used to define the predicted number of transfers that will take place during the operation of the authorised development and therefore the expected displacement for pilotage, where: (a) the Tongue Deep Water Diamond area is defined as including a 1 nautical mile radius around the current location of the Tongue Deep Water Diamond; (b) evidence gathered is based on an analysis of AIS data for the Tongue Deep Water Diamond area identifying the numbers of pilotage that transit to the Tongue Deep Water Diamond; and (c) any evidence as provided by the Port of London Authority under sub-paragraph (2) will be taken into account.

Requirement for written approval

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

Amendments to approved details

32.—(1) With respect to any requirement which requires the authorised development or any part of it to be carried out in accordance with the details, plans or schemes approved under this Schedule, the approved details, plans or schemes are, subject to sub-paragraph (2), taken to include any amendments or variations that may subsequently be approved in writing by the relevant planning authority in consultation with any other person specified in the requirement in question, or approved in writing by the relevant planning authority or another approval authority.

(2) Any amendments to or variations from any details, plans or schemes approved pursuant to these requirements must be minor or immaterial and in order to obtain approval to such amendments or variations it must be demonstrated to the reasonable satisfaction of the relevant

planning authority that the subject matter of the approval sought is not likely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Pre-commencement works

33.—(1) No pre-commencement works may be carried out until all details relevant to the pre-commencement works required by Requirements 14, 17, 18, 19, 21, 22, 23, 24 and 25 in Schedule 1 Part 3 of this Order have been submitted to and approved by the relevant authority as required by that requirement.

(2) In addition to sub-section (1);

(a) the undertaker may submit; and

(b) the relevant discharging authority may request

any additional information deemed necessary to ensure adequate mitigation is secured in relation to the pre-commencement works.

(3) The details required pursuant to sub-paragraphs (1) and (2) may be submitted separately and in advance of the details required to discharge the requirement in advance of commencement.

SCHEDULE 2

Article 8

Streets subject to Street Works

<i>(1) Area</i>	<i>(2) Street subject to street work</i>
District of Thanet	SANDWICH ROAD at reference point A-B on the onshore street works plan
District of Thanet	SANDWICH ROAD at reference point C-D on the onshore street works plan
District of Dover	SANDWICH ROAD at reference point E-F on the onshore street works plan
District of Dover	SANDWICH ROAD at reference point G-H on the onshore street works plan
District of Dover	A256 at reference point I-J on the onshore street works plan
District of Dover	A256 at reference point K-L on the onshore street works plan
District of Dover	A256 at reference point M-N on the onshore street works plan

SCHEDULE 3

Article 9

Public Rights of Way to be Temporarily Stopped Up

<i>(1) Area</i>	<i>(2) Public rights of way to be temporarily stopped up</i>	<i>(3) Extent of temporary stopping up</i>
District of Thanet	England Coastal Path	Approximately 225 metres of footpath reference England Coastal Path shown in orange between points marked A-B on the public rights of way to be temporarily stopped up plan
District of Thanet	England Coastal Path	Approximately 58 metres of footpath reference England Coastal Path shown in orange

District of Thanet	England Coastal Path	between points marked C-D on the public rights of way to be temporarily stopped up plan Approximately 48 metres of footpath reference England Coastal Path shown in orange between points marked E-F on the public rights of way to be temporarily stopped up plan
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SCHEDULE 4

Article 11

Access to Works

<i>(1) Area</i>	<i>(2) Description of access</i>
District of Thanet	Vehicular access from SANDWICH ROAD to the east marked at point A on the access to works plan
District of Thanet	Vehicular access from SANDWICH ROAD to the east marked at point B on the access to works plan
District of Thanet	Vehicular access from SANDWICH ROAD to the east marked at point C on the access to works plan
District of Dover	Vehicular access from SANDWICH ROAD to the south marked at point D on the access to works plan
District of Dover	Vehicular access from the A256 to the east marked at point E on the access to works plan
District of Dover	Vehicular access from the A256 to the east marked at point F on the access to works plan
District of Dover	Vehicular access from the A256 to the west marked at point G on the access to works plan

SCHEDULE 5

Article 19

Land in which only New Rights etc., may be acquired

<i>(1) Number of land shown on land plan</i>	<i>(2) Purpose for which rights may be acquired</i>
Right A Landfall Plots 01/15 and 01/20	1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to— (a) construct, lay and install by way of drilling or trenching and construct and repair, renew, upgrade, inspect, remove and replace underground electrical cables and ducts, jointing works including transition joint bays and other apparatus together with such telemetry and fibre optic lines, structures, jointing works, ducting and other apparatus, protection and safety

measures and equipment which is ancillary to the purposes of conveying electricity along such electrical cables (which collectively for the purposes of this schedule are referred to as the “cables”);

- (b) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) effect access to offshore apparatus and carry out works for the purposes of construction, installation, operation, maintenance and decommissioning of the parts of the authorised project that communicate between the onshore and offshore elements of the authorised project;
- (d) install, retain, and connect apparatus to connect onshore electrical apparatus to offshore electrical apparatus;
- (e) enter and be upon the land and remain with or without plant, vehicles, vessels, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity along the cables, or use of the cables, cable ducts and jointing works;
- (f) retain and use the cables, cable ducts and jointing pits for the purpose of the conveyance of telecommunications and electricity;
- (g) pass and repass with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying down, installing, adjusting, altering, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;
- (h) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;
- (i) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing,

upgrading, inspecting, removal and replacing of the cables, cable ducts and jointing works;

- (j) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
- (k) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (l) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduit or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers); and
- (m) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass.

Right B

Access tracks

Plots 01/25, 01/30, 01/35, 01/40, 01/45, 01/85, 01/90, 01/95, 01/100, 01/110, 01/115, 01/120, 01/125, 02/20, 02/40, 02/50, and 02/80

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;
- (b) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of access to adjoining land and highway;
- (c) retain, maintain and use temporary supporting or protective structures and erect temporary supporting or protective structures (including the bridging over of or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
- (d) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right

to pass and repass to adjoining land;

- (e) retain and maintain existing temporary permissive paths and lay out temporary permissive paths for public use (if applicable);
- (f) effect access and egress to and from the highway;
- (g) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
- (h) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights); and
- (i) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 1 means such other parts of the land within the Order limits required for the authorised project.

Right C
Full cable rights Plots 01/60, 01/65 and 01/70

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of drilling or trenching;
- (b) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining,

repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;

- (d) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
- (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity and telecommunications along the cables, or use of the cable ducts and jointing works;
- (f) retain and use the cables for the purposes of the conveyance of telecommunications and electricity;
- (g) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables, cable ducts and jointing works;
- (h) install and maintain cable marker posts to identify the location of the cables, cable ducts and jointing works as required for routine integrity testing;
- (i) remove, store and stockpile materials (including excavated material) within the Order land;
- (j) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);
- (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of

statutory undertakers);

- (l) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
- (m) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (n) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables, cable ducts and jointing works;
- (o) carry out environmental mitigation, remediation and enhancement works;
- (p) install, construct, use and remove temporary welfare facilities during any periods of construction, maintenance, repair, replacement, renewal, upgrade and removal of the cables, cable ducts and jointing works;
- (q) when the cables are temporarily unusable, to lay down, install, use, maintain and inspect on the surface of the land electric lines, telecommunications, ancillary equipment, associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (r) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.

2. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;
- (b) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of access to adjoining

land and highway;

- (c) erect temporary supporting or protective structures (including the bridging over of or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
- (d) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass to adjoining land;
- (e) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (f) effect access to the highway;
- (g) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
- (h) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the exercise of the rights); and
- (i) retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 2 means such other parts of the land within the Order limits required for the authorised project.

3. The right to enter and remain on the land for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project, and to—

- (a) enter upon the land and to create temporary secure areas;
- (b) place equipment on the land, including portakabins and welfare equipment;
- (c) store plant and materials and equipment;

- (d) create car parking sites, site offices, site areas for temporary security and welfare facilities;
- (e) effect access and egress to and from the highway;
- (f) create fuel storage and bunded facilities for the storage of materials ancillary to the implementation of the authorised project; and
- (g) access the underground electrical cables, cable ducts and jointing works and any other land used or to be used in connection with the installation and use of the underground electrical cables, cable ducts and jointing works, over the temporary secure area within the land, for purposes in connection with the installation and use of the underground electrical cables.

4. A restrictive covenant over the land for the benefit of the remainder of the Order land to—

- (a) prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction or erection of works of any kind (including the foundations, footings or other supportive structures thereto);
- (b) prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);
- (c) prevent mole draining or anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the Undertaker save as are reasonably required for agricultural activities or are required to be carried out by National Grid in order to exercise their rights in relation to their apparatus within the Order land;
- (d) prevent the planting or growing within the Order land of any trees, shrubs or

underwood without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project) provided that the growing within the land of any pre-existing trees, shrubs or underwood do not require the consent of the undertaker; and

- (e) prevent anything to be done in or upon the Order land or any part thereof which shall or which it is reasonably foreseeable may interfere with the exercise of the other rights set out in this Schedule or the use of the authorised project or in any way render the authorised project or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

Right D

Full cable rights; with access to highway
Plots 02/120

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of drilling and trenching;
- (b) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
- (d) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading,

- inspecting and removing the cables, cable ducts and jointing works;
- (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity and telecommunications along the cables, or use of the cable ducts and jointing works;
- (f) retain and use the cables for the purposes of the conveyance of telecommunications and electricity;
- (g) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables, cable ducts and jointing works;
- (h) install and maintain cable marker posts to identify the location of the cables, cable ducts and jointing works as required for routine integrity testing;
- (i) remove, store and stockpile materials (including excavated material) within the Order land;
- (j) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);
- (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (l) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
- (m) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (n) remove archaeological artefacts where they would prevent or cause it to be

materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables, cable ducts and jointing works;

- (o) carry out environmental mitigation, remediation and enhancement works;
- (p) install, construct, use and remove temporary welfare facilities during any periods of construction, maintenance, repair, replacement, renewal, upgrade and removal of the cables, cable ducts and jointing works;
- (q) when the cables are temporarily unusable, to lay down, install, use, maintain and inspect on the surface of the land electric lines, telecommunications, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (r) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.

2. The right to enter and remain on the land for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project, and to—

- (a) enter upon the land and to create temporary secure areas;
- (b) place equipment on the land, including portakabins and welfare equipment;
- (c) store plant, materials and equipment;
- (d) create car parking sites, site offices, site areas for temporary security and welfare facilities;
- (e) effect access and egress to and from the highway;
- (f) create fuel storage and bunded facilities for the storage of materials ancillary to the implementation of the authorised project; and
- (g) access the underground electrical cables, cable ducts and jointing works and any other land used or to be used in connection with the installation and use of the underground electrical cables, cable ducts and jointing works, over the temporary secure area within the land, for purposes in connection with the installation and use of the underground electrical cables.

3. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;
- (b) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of access to adjoining land and highway;
- (c) erect temporary supporting or protective structures (including the bridging over of or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
- (d) alter, lop, uproot and replant trees, shrubs and hedges for the purposes of enabling the right to pass and repass to adjoining land;
- (e) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (f) effect access and egress to and from the highway;
- (g) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
- (h) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights); and
- (i) retain, maintain, install, use, inspect, modify, improve, maintain, adjust,

repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 3 means such other parts of the land within the Order limits required for the authorised project.

4. A restrictive covenant over the land for the benefit of the remainder of the Order land to—
- (a) prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction or erection of works of any kind (including the foundations, footings or other supportive structures thereto);
 - (b) prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);
 - (c) prevent mole draining or anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the Undertaker save as are reasonably required for agricultural activities or are required to be carried out by National Grid in order to exercise their rights in relation to their apparatus within the Order land;
 - (d) prevent the planting or growing within the Order land of any trees, shrubs or underwood without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project) provided that the growing within the land of any pre-existing trees, shrubs or underwood do

not require the consent of the undertaker; and

- (e) prevent anything to be done in or upon the Order land or any part thereof which shall or which it is reasonably foreseeable may interfere with the exercise of the other rights set out in this Schedule or the use of the authorised project or in any way render the authorised project or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

Right E

Full cable rights (not including effecting access to the highway)

Plots 01/75, 01/80, 02/10, 02/15, 02/30, 02/35, 02/121; 02/122; 02/123; 02/124; 02/125, 02/135 and 02/140

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of drilling, and trenching;
- (b) retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
- (d) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
- (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity and telecommunications along the cables, or use of the cable ducts and jointing works;
- (f) retain and use the cables for the

purposes of the conveyance of telecommunications and electricity;

- (g) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables, cable ducts and jointing works;
- (h) install and maintain cable marker posts to identify the location of the cables, cable ducts and jointing works as required for routine integrity testing;
- (i) remove store and stockpile materials (including excavated material) within the Order land;
- (j) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);
- (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (l) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
- (m) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (n) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables, cable ducts and jointing works;
- (o) carry out environmental mitigation, remediation and enhancement works;
- (p) install, construct, use and remove temporary welfare facilities during any periods of maintenance, repair, replacement, renewal, during any

periods of maintenance, repair, replacement, renewal, upgrade and removal of the cables, cable ducts and jointing works;

- (q) when the cables are temporarily unusable, to lay down install use maintain and inspect on the surface of the land electric lines telecommunications, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (r) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.

2. The right to enter and remain on the land for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project, and to—

- (a) enter upon the land and to create temporary secure areas;
- (b) place equipment on the land, including portakabins and welfare equipment;
- (c) store plant, materials and equipment;
- (d) create car parking sites, site offices, site areas for temporary security and welfare facilities;
- (e) create fuel storage and bunded facilities for the storage of materials ancillary to the implementation of the authorised project; and
- (f) access the underground electrical cables, cable ducts and jointing works and any other land used or to be used in connection with the installation and use of the underground electrical cables, over the temporary secure area within the land, for purposes in connection with the installation and use of the underground electrical cables.

3. A restrictive covenant over the land for the benefit of the remainder of the Order land to—

- (a) prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction or erection of works of any kind (including the foundations, footings or other supporting structures thereto);
- (b) prevent anything to be done by way of hard surfacing of the Order land with

concrete of any kind or with any other material or surface whatsoever without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);

- (c) prevent mole draining or anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the Undertaker save as are reasonably required for agricultural activities or are required to be carried out by National Grid in order to exercise their rights in relation to their apparatus within the Order land; prevent the planting or growing within the Order land of any trees, shrubs or underwood without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project); and
- (d) prevent anything to be done in or upon the Order land or any part thereof which shall or which it is reasonably foreseeable may interfere with the exercise of the other rights set out in this Schedule or the use of the authorised project or in any way render the authorised project or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

Right F
 Minor crossings inc. highway
 Plots 02/90, 02/95, 02/100, 02/110, 02/105 and
 02/115

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of drilling and trenching;
- (b) retain, maintain, install, use, inspect, modify, improve, maintain, adjust,

repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;

- (c) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables and cable ducts;
- (d) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables and cable ducts;
- (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity and telecommunications along the cables and cable ducts;
- (f) retain and use the cables for the purposes of the conveyance of telecommunications and electricity;
- (g) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables and cable ducts;
- (h) install and maintain cable marker posts to identify the location of the cables and cable ducts as required for routine integrity testing;
- (i) remove store and stockpile materials (including excavated material) within the Order land;
- (j) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers

following the end of each period of the exercise of the rights);

- (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (l) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
- (m) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (n) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables and cable ducts;
- (o) carry out environmental mitigation, remediation and enhancement works;
- (p) install, construct, use and remove temporary welfare facilities during any periods of maintenance, repair, replacement, renewal, upgrade and removal of the cables and cable ducts;
- (q) when the cables are temporarily unusable, to lay down install use maintain and inspect on the surface of the land electric lines telecommunications, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (r) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.

Right G

Full cable rights with connection to substation
Plots 02/130

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of drilling and trenching;
- (b) construct and maintain any apparatus necessary to connect into cable sealing ends and the National Grid substation;
- (c) retain, maintain, install, use, inspect,

modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;

- (d) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
- (e) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
- (f) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity and telecommunications along the cables, or use of the cable ducts and jointing works;
- (g) retain and use the cables for the purposes of the conveyance of telecommunications and electricity;
- (h) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables, cable ducts and jointing works;
- (i) install and maintain cable marker posts to identify the location of the cables, cable ducts and jointing works as required for routine integrity testing;
- (j) remove store and stockpile materials (including excavated material) within the Order land;
- (k) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any

temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);

- (l) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
 - (m) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
 - (n) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
 - (o) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables, cable ducts and jointing works;
 - (p) carry out environmental mitigation, remediation and enhancement works;
 - (q) install, construct, use and remove temporary welfare facilities during any periods of maintenance, repair, replacement, renewal, during any periods of maintenance, repair, replacement, renewal, upgrade and removal of the cables, cable ducts and jointing works;
 - (r) when the cables are temporarily unusable, to lay down install use maintain and inspect on the surface of the land electric lines telecommunications, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
 - (s) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.
2. The right to enter and remain on the land for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project, and to—
- (a) enter upon the land and to create temporary secure areas;

- (b) place equipment on the land, including portakabins and welfare equipment;
- (c) store plant and materials and equipment;
- (d) create car parking sites, site offices, site areas for temporary security and welfare facilities;
- (e) effect access and egress to and from the highway;
- (f) create fuel storage and bunded facilities for the storage of materials ancillary to the implementation of the authorised project; and
- (g) access the underground electrical cables, cable ducts and jointing works and any other land used or to be used in connection with the installation and use of the underground electrical cables, cable ducts and jointing works, over the temporary secure area within the land, for purposes in connection with the installation and use of the underground electrical cables.

3. A restrictive covenant over the land for the benefit of the remainder of the Order land to—

- (a) prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction or erection of works of any kind (including the foundations, footings or other supportive structures thereto);
- (b) prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);
- (c) prevent mole draining or anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the Undertaker save as are reasonably required for agricultural activities or are required to be carried out by National Grid in

order to exercise their rights in relation to their apparatus within the Order land;

- (d) prevent the planting or growing within the Order land of any trees, shrubs or underwood without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project); and
- (e) prevent anything to be done in or upon the Order land or any part thereof which shall or which it is reasonably foreseeable may interfere with the exercise of the other rights set out in this Schedule or the use of the authorised project or in any way render the authorised project or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

Right H

Seaward cable rights

Plots 00/01, 00/02, 00/03, 00/05, 00/10, 00/15, 01/01, 01/02, 01/05 and 01/06

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of drilling and trenching;
- (b) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables and cable ducts;
- (c) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity and telecommunications along the cables and cable ducts;
- (d) retain and use the cables for the purposes of the conveyance of telecommunications and electricity;
- (e) place and use plant, machinery and temporary structures within the land

Right I
Sea wall installation
Plots 01/10 and 01/11

for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables and cable ducts;

- (f) remove materials (including excavated material) within the Order land;
- (g) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (h) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables and cable ducts;
- (i) carry out environmental mitigation, remediation and enhancement works;
- (j) when the cables are temporarily unusable, to lay down install use maintain and inspect on the surface of the land electric lines telecommunications, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (k) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of drilling and trenching;
- (b) retain, repair, renew, upgrade, strengthen, maintain, inspect, remove and replace existing structures including the existing sea wall to support and protect the cables, cable ducts and jointing works;
- (c) effect access to offshore apparatus and carry out works for the purposes of construction, installation, operation, maintenance and decommissioning of the parts of the authorised project that communicate between the onshore and

offshore elements of the authorised project;

- (d) install, retain, and connect apparatus to connect onshore electrical apparatus to offshore electrical apparatus;
- (e) retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (f) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables and cable ducts;
- (g) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables and cable ducts;
- (h) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity and telecommunications along the cables and cable ducts;
- (i) retain and use the cables for the purposes of the conveyance of telecommunications and electricity;
- (j) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables and cable ducts;
- (k) install and maintain cable marker posts to identify the location of the cables and cable ducts as required for routine integrity testing;
- (l) remove store and stockpile materials (including excavated material) within the Order land;
- (m) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading,

improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);

- (n) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (o) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
- (p) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (q) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables and cable ducts;
- (r) carry out environmental mitigation, remediation and enhancement works;
- (s) install, construct, use and remove temporary welfare facilities during any periods of maintenance, repair, replacement, renewal, upgrade and removal of the cables and cable ducts;
- (t) when the cables are temporarily unusable, to lay down install use maintain and inspect on the surface of the land electric lines telecommunications, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (u) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.

Modification of Compensation and Compulsory Purchase Enactments for Creation of New Rights

Compensation Enactments

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

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

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there is substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there is substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

Application of the 1965 Act

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

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

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

4. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

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

5. Section 8(1) of the Compulsory Purchase Act 1965 has effect as if references to acquiring land were to acquiring a right in the land, and Schedule 2A to that Act is to be read as if, for that Schedule, there were substituted—

(a) 1973 c.26.

“SCHEDULE 2A

Counter-Notice Requiring Purchase of Land

Introduction

1.—(1) This Schedule applies where an undertaker serves a notice to treat in respect of a right over the whole or part of a house, building or factory.

(2) But see section 2A of the Acquisition of Land Act 1981 (under which a compulsory purchase order can exclude from this Schedule land that is nine metres or more below the surface).

2. In this Schedule “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the undertaker to purchase the owner’s interest in the house, building or factory.

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

Response to counter-notice

5. On receiving a counter-notice the undertaker must decide whether to—

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

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

7. If the undertaker decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

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

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

Determination by Upper Tribunal

10. On a referral under paragraph 7 the Upper Tribunal must determine whether the acquisition of the right would—

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

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

- (a) the effect of the acquisition of the right,
- (b) the proposed use of the right, and

- (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

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

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

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

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

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

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

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

7. Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act is modified correspondingly.

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

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 7

Article 23

Land of which Temporary Possession may be taken

<i>(1) Area</i>	<i>(2) Number of land shown on land plan</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Part of the authorised project</i>
District of Thanet	00/01, 00/02, 00/03, 00/05, 00/10, 00/15, 01/01, 01/02, 01/05, 01/06, 01/10, 01/11, 01/15, 01/20	Facilitating construction and carrying out the authorised project; carrying out the authorised project; access for carrying out the authorised project.	Work Nos. 3A, 3B, 4, 4A and 4B
District of Thanet	01/25, 01/30, 01/35, 01/40, 01/45	Laying of hardstanding and improvements to tracks access for carrying out the authorised project.	Work Nos. 4, 4A, 4B, 5, 6 and 7
District of Thanet	01/50	Facilitating construction and carrying out Work No. 5; construction and laydown, carrying out the authorised project; access for carrying out the authorised project.	Work Nos. 4, 4A, 4B, 5, 6, 7, 8, 9, 10, 11, 12 and 16
District of Thanet	01/55	Upgrading and widening the existing access way to facilitate access for carrying out the authorised project.	Work Nos. 4, 4A, 4B, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16
District of Thanet	01/60, 01/65, 01/70, 01/75, 01/80	Facilitating construction and carrying out the authorised project; carrying out the authorised project; access for carrying out the authorised project.	Work Nos. 4, 4A, 4B, 5, 6 and 7
District of Dover	01/85, 01/90, 01/95, 01/100, 01/110, 01/115, 01/120, 01/125, 02/20, 02/40, 02/50, 02/80	Laying of hardstanding and improvements to tracks access for carrying out the authorised project	Work Nos. 4, 4A, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16
District of Dover	01/105, 02/05	Facilitating construction and carrying out Work No. 9; construction and laydown, carrying out the authorised project; access for carrying out the authorised project.	Work Nos. 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16

District of Dover	02/10, 02/15, 02/30, 02/35, 02/90, 02/95, 02/100, 02/105, 02/110, 02/115, 02/120, 02/121, 02/122, 02/123, 02/124, 02/125, 02/130, 02/135, 02/140	Facilitating construction and carrying out the authorised project; carrying out the authorised project; access for carrying out the authorised project.	Work Nos. 7, 13, 14, 15 and 16
District of Dover	02/25	Facilitating construction and carrying out Work No. 11; construction and laydown, carrying out the authorised project; access for carrying out the authorised project.	Work Nos. 7, 9, 10, 11, 12, 13, 14, 15 and 16

SCHEDULE 8

Article 41

Protective Provisions

PART 1

Protection for Electricity, Gas, Water and Sewerage Undertakers

1. For the protection of the undertakers referred to in this part of this Schedule the following provisions must, unless otherwise agreed in writing between the undertaker and the affected undertaking concerned, have effect.

2. In this part of this Schedule—

“affected undertaker” means

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989(a);
 - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(b);
 - (c) a water undertaker within the meaning of the Water Industry Act 1991(c); and
 - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

“alternative apparatus” means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that electricity undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(a) 1989 c.29. Section 64 sub-paragraph (1) was amended by section 108 and paragraphs 24, 38(1), (3) of Part II of Schedule 6 of the Utilities Act 2000.

(b) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

(c) 1991 c.56.

(c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that affected undertaker for the purposes of water supply; and any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991 at the time of the works mentioned in this Part; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the affected undertaker under the Water Industry Act 1991; and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties; and

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land.

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of any provision in this Order or anything shown on the land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of an affected undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the affected undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the affected undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use all reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with **article 36** (arbitration).

(5) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with **article 36** (arbitration), and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation

the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the affected undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights will be granted upon such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with **article 36** (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the affected undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator will make such provision for the payment of compensation by the undertaker to that affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the affected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the affected undertaker will be entitled to watch and inspect the execution of those works.

(3) Any requirements made by an affected undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an affected undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(6) The undertaker will not be required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the affected undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with **article 36** (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) will be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an affected undertaker, its officers, servants, contractors or agents.

(3) An affected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise will be made without the consent of the undertaker

which, if it withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

10. Any dispute arising between the undertaker and the affected undertaker under this Schedule must, unless otherwise agreed in writing between the undertaker and the affected undertaker, be determined by arbitration in accordance with **article 36** (arbitration).

11. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

For the Protection of National Grid as Electricity and Gas Undertaker

Application

1. For the protection of the National Grid referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the promoter and National Grid, have effect.

Interpretation

2. In this Part of this Schedule—

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

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable the National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that electricity undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in **article 2** of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in **article 2** of this Order and commencement must be construed to have the same meaning save that for the purpose of this part only the term commence includes operations consisting site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purposes of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure and temporary hard standing;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the promoter to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means, as appropriate—

- (a) National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH and any successor to their licence under Part 1 of the Electricity Act 1989; and
- (b) National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH and any successor to their licence under Part 1 of the Gas Act 1986.

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

“promoter” means the undertaker as defined in **article 2** of this Order;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the promoter under paragraph 8(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 8(2) or otherwise; and
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”;

(2) Except for paragraphs 3 (apparatus of undertakers in stopped up streets), (retained apparatus: protection), (expenses) and (compensation) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the promoter and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

(3) Notwithstanding Art 25(5) or any other powers in the Order generally, s85 of the 1991 Act in relation to costs sharing and the powers in respect of cost sharing generally including the regulations made thereunder does not apply in relation to any diversion of apparatus of National Grid under the 1991 Act.

Apparatus of Undertakers in stopped up streets

3. Notwithstanding the temporary stopping up or diversion of any highway under the powers of **article 10** (Temporary stopping up of streets), National Grid will be at liberty at all times to take

all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of land

4. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the promoter may not acquire any land interest or apparatus or override any easement and/or other interest of National Grid otherwise than by agreement.

5. As a condition of agreement between the parties in paragraph 1, prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between the undertaker and the promoter) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of the undertaker and/or affects the provisions of any enactment or agreement regulating the relations between the undertaker and the promoter in respect of any apparatus laid or erected in land belonging to or secured by the promoter, the promoter must as the undertaker reasonably and necessarily requires enter into such deeds of consent upon such terms and conditions as may be agreed between the undertaker and the promoter acting reasonably and which must be no less favourable on the whole to the undertaker unless otherwise agreed by the undertaker, and it will be the responsibility of the promoter to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

6. The promoter and the undertaker agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by the undertaker and/or other enactments relied upon by the undertaker as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

7. Any agreement or consent granted by the undertaker under paragraph 8 or 9 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under paragraph 4.

Removal of apparatus

8.—(1) If, in the exercise of the agreement reached in accordance with paragraph 4 or in any other authorised manner, the promoter acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the promoter requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the promoter must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 9(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the promoter; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the promoter, or the promoter is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the promoter, as soon as possible take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, with the promoter's assistance if required by National Grid, save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the promoter under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the promoter.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the promoter to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

9.—(1) Where, in accordance with the provisions of this Part of this Schedule, the promoter affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the promoter and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid, acting reasonably.

(2) If the facilities and rights to be afforded by the promoter and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, in the matter may be referred to arbitration in accordance with paragraph 17 (Arbitration) of this Part of this Schedule and the arbitrator may make such provision for the payment of compensation by the promoter to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection Gas Undertakers

10.—(1) The promoter must provide technical information relevant to any specified works to National Grid as soon as reasonable practicable after it becomes available, and will seek to liaise with National Grid as early as reasonably practicable regarding the specified works.

(2) Not less than 56 days before the commencement of any specified works the promoter must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(3) The plan to be submitted to National Grid under sub-paragraph (2) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(4) The promoter must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and

(b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus provided that such modifications are requested by National Grid within a period of 56 days unless otherwise agreed between the parties, beginning with the date on which the plan under sub-paragraph (2) is submitted to it. For the avoidance of doubt, provided that any further iterations of the plan submitted to National Grid for approval as a result of modifications required under this paragraph are not materially different to the modifications previously made by National Grid, any further required modifications will be made by the promoter as soon as reasonably practicable thereafter and in any event within 56 days of receipt of any further plans.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (2) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the promoter and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (6) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the promoter (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's reasonable satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to sub-paragraph (1) or (2) (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (5) or (6) and in consequence of the works proposed by the promoter, reasonably requires the removal of any apparatus and gives written notice to the promoter of that requirement, paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the promoter under paragraph 8(2).

(10) Nothing in this paragraph precludes the promoter from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(11) The promoter will not be required to comply with sub-paragraph (2) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order the promoter must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(13) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the promoter must implement an appropriate ground mitigation scheme

save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 12.

Retained apparatus: Protection of Electricity Undertakers

11.—(1) The promoter must provide technical information relevant to any specified works to National Grid as soon as reasonably practicable after it becomes available, and will seek to liaise with National Grid as early as reasonably practicable regarding the specified works.

(2) Not less than 56 days before the commencement of any specified works, the promoter must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(3) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (2) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(4) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (2) must, in addition to the matters set out in sub-paragraph (3), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers;
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(5) The promoter must not commence any works to which sub-paragraphs (3) or (4) apply until National Grid has given written approval of the plan so submitted.

(6) Any approval of National Grid required under sub-paragraph (5)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (3) or (4); and
- (b) must not be unreasonably withheld.

(7) In relation to any work to which sub-paragraphs (3) or (4) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of

securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(8) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (2) or as relevant sub-paragraphs (3), (4) or (7), as approved or as amended from time to time by agreement between the promoter and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (7) or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(9) Where National Grid requires any protective works to be carried out by itself or by the promoter (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(10) If National Grid in accordance with sub-paragraphs (7) or (8) and in consequence of the works proposed by the promoter, reasonably requires the removal of any apparatus and gives written notice to the promoter of that requirement, paragraphs (7) to (8) apply as if the removal of the apparatus had been required by the promoter under paragraph 8(2).

(11) Nothing in this paragraph precludes the promoter from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(12) The promoter will not be required to comply with sub-paragraph (2) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (7), (8) and (9) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (13) at all times.

(13) At all times when carrying out any works authorised under the Order, the promoter must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

12.—(1) Subject to the following provisions of this paragraph, the promoter must pay to National Grid on demand all charges, costs and expenses reasonably and properly anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a)
 - (i) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid
 - (ii) using its own compulsory purchase powers to acquire any necessary rights under paragraph 4; and/or
 - (iii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any necessary diversion work or the provision of any alternative apparatus;

- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated;

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the promoter or, in default of agreement, is not determined by arbitration in accordance with **article 36** (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the promoter.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Compensation

13.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the promoter or in consequence of any act or default of the promoter (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the promoter under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable

to pay any amount to any third party or National Grid incurs any liability as a result of the transfer of undertaking under **Article 5**, the promoter will—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) compensate National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the promoter or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the promoter from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the promoter in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the promoter with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or **article 5** (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section (b) will be subject to the full terms of this Part of this Schedule including this paragraph 13.

(4) National Grid must give the promoter reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the promoter and considering their representations.

Enactments and agreements

14. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the promoter, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the promoter and National Grid in respect of any apparatus laid or erected in land belonging to the promoter on the date on which this Order is made.

Co-operation

15.—(1) Where in consequence of the proposed construction of any of the authorised works, the promoter or an undertaker requires the removal of apparatus under paragraph 8(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraph 8, the promoter shall must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid shall must use its best endeavours to co-operate with the promoter for that purpose.

(2) For the avoidance of doubt whenever the undertaker’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by National Grid or the taking of action by National Grid, it must not be unreasonably withheld or delayed.

Access

16. If in consequence of the agreement reached in accordance with paragraph 4 or the exercise of any of the powers granted under this Order, National Grid’s access to any apparatus is

materially obstructed, the promoter must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

17. Save for any differences or disputes arising under paragraph 8(2), 8(4), 9(1), 10 and 11, any difference or dispute arising between the promoter and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the promoter and National Grid, be determined by arbitration in accordance with **article 36** (arbitration).

Notices

18. The plans submitted to National Grid by the promoter pursuant to paragraphs 10 and 11 must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the promoter in writing.

PART 3

Protection for Operators of Electronic Communications Code Networks

1.—(1) For the protection of any operator, the following provisions will, unless otherwise agreed in writing between the undertaker and the operator, have effect.

(2) In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003;

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system is construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act^(a);

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

2. The exercise of the powers of **article 27** (statutory undertakers) are subject to Part 10 of Schedule 3A of the 2003 Act.

3.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or

^(a) See section 106.

- (b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—
 - (i) make reasonable compensation to an operator for loss sustained by it; and
 - (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator will give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand will be made without the consent of the undertaker which, if it withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any dispute arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under **article 36** (arbitration).

4. This part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

5. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

SCHEDULE 9

Arbitration Rules

Primary objective

1.—(1) The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive dispute or decision between the parties (save as to costs) within four months from the date the Arbitrator is appointed pursuant to **article 36** of the Order.

(2) The Arbitration will be deemed to have commenced when a party (“the Claimant”) serves a written notice of arbitration on the other party (“the Respondent”).

Time periods

2.—(1) All time periods in these Arbitration Rules will be measured in days and this will include weekends, but not bank or public holidays.

(2) Time periods will be calculated from the day after the Arbitrator notifies the parties in writing of their acceptance of an appointment by agreement of the parties.

Timetable

3.—(1) The timetable for the Arbitration will be that set out in sub-paragraphs (2) to (4) below unless amended in accordance with sub-paragraph 5(3).

(2) Within 14 days of the Arbitrator being appointed, the Claimant must provide both the Respondent and the Arbitrator with:

- (a) a written Statement of Claim which describes the nature of the dispute or decision between the parties, the legal and factual issues, the Claimant's contentions as to those issues, the amount of its claim and the remedy it is seeking;
 - (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.
- (3) Within 14 days of receipt of the Claimant's statements under sub-paragraph (2) by the Arbitrator and Respondent, the Respondent must provide the Claimant and the Arbitrator with—
- (a) a written Statement of Defence responding to the Claimant's Statement of Claim, its statement in respect of the nature of the dispute or decision, the legal and factual issues in the Claimant's claim, its acceptance of any element(s) of the Claimant's claim, its contentions as to those elements of the Claimant's claim it does not accept;
 - (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;
 - (c) any objections it wishes to make to the Claimant's statements, comments on the Claimant's expert report(s) (if submitted by the Claimant) and explanations for the objections.
- (4) Within seven days of the Respondent serving its statements sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the Arbitrator with—
- (a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the dispute or decision, the issues (both factual and legal) and its contentions in relation to the issues;
 - (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
 - (c) any expert report in response to the Respondent's submissions;
 - (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent; and
 - (e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. No single pleading will exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The Arbitrator must make an award on the substantive dispute(s) or decision based solely on the written material submitted by the parties unless the Arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within two days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within seven days of receiving the last submission, the Arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within ten days of the Arbitrator advising the parties that he or she will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the Arbitrator must direct a date and venue which he or she considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the Arbitrator's direction confirming the date and venue of the hearing.

(6) A decision will be made by the Arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the Arbitrator, then any expert(s) attending the hearing may be asked questions by the Arbitrator.

(7) There will be no process of examination and cross-examination of experts, but the Arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given

by the expert(s) in response to the Arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

- (a) At least 28 days before a hearing, the Arbitrator will provide a list of issues to be addressed by the expert(s);
- (b) If more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and
- (c) The form and content of a joint report must be as directed by the Arbitrator and must be provided at least seven days before the hearing.

(8) Within 14 days of a Hearing or a decision by the Arbitrator that no hearing is to be held the Parties may by way of exchange provide the Arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The Arbitrator must take these submissions into account in the Award.

(9) The Arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive dispute or decision within four months of the date on which they are appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the Arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before him/her attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction.

(11) The Arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the Arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The Arbitrator has all the powers of the Arbitration Act 1996, including the non-mandatory sections, save where modified by these Rules.

(2) There must be no discovery or disclosure, except that the Arbitrator will have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the Arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the Arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the Arbitrator. In the absence of agreement, the Arbitrator may vary the timescales and procedure:

- (a) if the Arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the Arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the Arbitrator's fees and expenses.

Costs

6.—(1) The costs of the Arbitration must include the fees and expenses of the Arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the Arbitration.

(2) Where the matter involves connected or interrelated issues, the Arbitrator will consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties must bear them or in what proportion they must be borne by the parties.

(4) The Arbitrator must award costs on the general principle that costs follow the event, having regard to all material circumstances, including such matters as exaggerated claims or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

7.—(1) The parties agree that any hearings in this Arbitration must take place in private.

(2) The parties and Arbitrator agree that any matters, materials, documents, expert reports and the like are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the Courts and for compliance with legislative rules, functions or obligations on either party.

(3) Either party to the proceedings, or the Arbitrator, may unilaterally decide to publicise any award made.

SCHEDULE 10

Article 37

Procedure for Discharge of Requirements

Applications made under requirement

1.—(1) Where an application has been made to a discharging authority for any agreement or approval required pursuant to requirements 9, 11, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28 and 29 in Part 3 of **Schedule 1** (requirements) of this Order, the discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1), the decision period is—

- (a) where no further information is requested under paragraph 2 (further information), eight weeks from the day immediately following that on which the application is received by the discharging authority;
- (b) where further information is requested under paragraph 2 (further information), eight weeks from the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in sub-paragraph (a) or (b).

Further information

2.—(1) In relation to any application to which this Schedule applies, the discharging authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the discharging authority considers such further information to be necessary and the requirement does not specify that consultation with a requirement consultee is required, it must, within seven business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement specifies that consultation with a requirement consultee is required, the discharging authority must issue the consultation to the requirement consultee within 5 business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 5 business days of receipt of such a request and in any event within 28 days of receipt of the application.

(4) If the discharging authority does not give such notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter be entitled to request further information without the prior agreement of the undertaker.

Appeals

3.—(1) The undertaker may appeal to the Secretary of State in the event that—

- (a) the discharging authority refuses an application for any agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the discharging authority does not give notice of its decision to the undertaker within the decision period as determined in paragraph 1;
- (c) on receipt of a request for further information pursuant to paragraph 2 (further information) the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State, a copy of the application submitted to the discharging authority and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”);
- (b) the undertaker must on the same day provide copies of the appeal documentation to the discharging authority and the requirement consultee (if applicable);
- (c) as soon as is practicable after receiving the appeal documentation, but in any event within 10 business days of receiving the appeal documentation, the Secretary of State must appoint a person and forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (d) the discharging authority and the requirement consultee (if applicable) must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person; and
- (e) the appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (d) above.

(3) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable. If the appointed person considers that further information is necessary to enable him to consider the appeal he or she must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within ten business days of that date.

(5) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under this paragraph.

(7) The appointed person may proceed to a decision even though no written representations have been made within those time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Part 3 of **Schedule 1** (requirements) as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) may not be taken to affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance on the award of costs or any guidance which may from time to time replace it.

Interpretation of this Schedule

4. In this Schedule—

“the appeal parties” means the discharging authority, the requirement consultee and the undertaker;

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971;

“discharging authority” means that person or body responsible for approving details pursuant to requirements 8, 14, 15, 12, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29 and 30, in Part 3 of **Schedule 1** (requirements);

“requirement consultee” means any body named in a requirement which is the subject of an appeal as a body to be consulted by the discharging authority in discharging that requirement.

SCHEDULE 11

Article 30

Deemed Licence under the 2009 Act – Generation Assets

PART 1

Interpretation

1. In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

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

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

“authorised deposits” means the substances and articles specified in Part 2, paragraph 2(3) of this licence;

“authorised scheme” means Work No. 1 described in Part 2, paragraph 3 of this licence or any part of that work;

“biogenic reef mitigation and monitoring plan” means the document certified as the biogenic reef mitigation and monitoring plan by the Secretary of State for the purposes of this Order;

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

“cable protection” means measures for cable crossings and where cable burial is not possible due to ground conditions, to protect cables and prevent loss of seabed sediment by use of grout bags, aprons, mattresses, flow energy dissipation (frond) devices or rock and gravel dumping;

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

“commence” means, in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for archaeological investigations, pre-construction surveys and monitoring and seabed preparation and clearance, and the words “commencement” and “commenced” will be construed accordingly;

“condition” means a condition in Part 4 of this licence;

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

“draught height” means the distance between the lowest point of the rotating blade of the wind turbine generator and MHWS;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

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

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

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

“export” means the flow of electricity from a wind turbine generator or offshore substation into a distribution network or transmission system for Great Britain, and “export” also includes the conveying of, or importing of, electricity between the distribution network or transmission system for Great Britain and the wind turbine generator or offshore substation;

“fisheries liaison and co-existence plan” means the document certified as the Fisheries Liaison and Co-existence Plan by the Secretary of State for the purposes of this Order;

“HAT” means highest astronomical tide;

“jacket foundation” means a steel jacket lattice-type structure constructed of steel which is fixed to the seabed at two or more points with pin piles or suction caissons and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment, and “discrete jacket foundation types” includes pre-piled or post-piled jackets, three-legged or four legged jackets, or straight or battered leg jackets;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this licence;

“LAT” means lowest astronomical tide;

“licensed activities” means the activities specified in Part 2 of this licence;

“maintain” includes inspect, maintain, repair, adjust, and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of **Schedule 1** (ancillary works) and any cable or any component part of any wind turbine generator, offshore substation, or

meteorological mast described in Part 1 of **Schedule 1** (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” is construed accordingly;

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

“MCA” means the Maritime and Coastguard Agency;

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

“meteorological mast” means a mast housing equipment to measure wind speed and other wind characteristics, including a topside housing electrical, communication and associated equipment and marking and lighting;

“monopile foundation” means a steel pile, typically cylindrical, driven or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“notice to mariners” means a notice issued by the undertaker to mariners to inform them of issues that affect the safety of navigation;

“offshore archaeological draft written scheme of investigation” means the document certified as the offshore archaeology draft written scheme of investigation by the Secretary of State for the purposes of this Order;

“offshore cables” means any Alternating Current (AC) cables offshore and includes fibre optic cables either within the cable or laid alongside;

“offshore Order limits” means the limits shown on the works plan within which the authorised scheme may be carried out, whose grid coordinates are set out in Part 2 paragraph 6 of this licence;

“offshore works plan” means the plan certified as the works plan (offshore) by the Secretary of State for the purposes of the Order;

“the Order” means the Thanet Extension Offshore Wind Farm Order 201X;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of the Order and to the extent the definition of ‘maintain’ is used within the document it will have the same interpretation as ‘maintain’ for the purposes of this Order;

“outline site integrity plan” means the document certified as the outline site integrity plan by the Secretary of State for the purposes of the Order;

“pre-commencement works” means archaeological investigations, pre-construction surveys and monitoring and seabed preparation and clearance;

“principal contractor” has the same meaning as in section 2 of the Construction (Design and Management) Regulation 2015;

“relevant site” means a European offshore marine site and a European site;

“structures exclusion zone” means the area hatched green on the offshore works plan;

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

“suction caisson” means large diameter steel cylindrical shells which penetrate the seabed assisted by a hydrostatic pressure differential for fixity of the structure it supports;

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

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

“undertaker” means Vattenfall Wind Power Ltd;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or

adapted for movement through, in, on or over water and which is at the time in, on or over water;

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

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

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

3. Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

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

(a) Marine Management Organisation

Marine Licensing
Lancaster House
Hampshire Court
Newcastle Business Park
Newcastle upon Tyne
NE4 7YH
Tel: 0300 123 1032;

(b) Marine Management Organisation (local office)

Marine Environment Team
Fish Market
Rock-A-Nore Road
Hastings
East Sussex
TN34 3DW
Tel: 01424 424 109;

(c) Trinity House

Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;

(d) The United Kingdom Hydrographic Office

Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;

- (e) Maritime and Coastguard Agency
Navigation Safety Branch
Bay 2/20, Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 020 3817 2433;
- (f) Centre for Environment, Fisheries and Aquaculture Science
Pakefield Road
Lowestoft
Suffolk
NR33 0HT
Tel: 01502 562 244;
- (g) Natural England
Area 1C, Nobel House
17 Smith Square
London
SW1P 2AL
Tel: 0300 060 4911;
- (h) Historic England
4th Floor, Cannon Bridge House
25 Dowgate Hill,
London
EC4R 2YA
020 7973 3700

PART 2

Licensed Marine Activities – General

1. This licence remains in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

2. The provisions of section 72 of the 2009 Act apply to this licence except that the provisions of section 72(7) relating to the transfer of the licence only apply to a transfer not falling within **article 5** (benefit of the Order).

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

4. Any amendments to or variations from the approved plans, protocols or statements must demonstrate that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

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

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling or seabed preparation for foundation works and cable sandwave preparation works; and
- (g) marine coatings, other chemicals and timber.

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

Array Area

<i>Point No</i>	<i>Latitude (DAS)</i>	<i>Longitude (DAS)</i>	<i>Point No</i>	<i>Latitude (DAS)</i>	<i>Longitude (DAS)</i>
1	51° 25' 33.041" N	1° 32' 30.523" E	8	51° 27' 38.815" N	1° 38' 7.249" E
2	51° 27' 40.652" N	1° 32' 53.134" E	9	51° 27' 38.873" N	1° 36' 4.331" E
3	51° 28' 13.973" N	1° 33' 56.681" E	10	51° 26' 34.609" N	1° 34' 10.445" E
4	51° 28' 19.898" N	1° 41' 47.085" E	11	51° 24' 9.695" N	1° 37' 39.727" E
5	51° 27' 7.350" N	1° 43' 30.472" E	12	51° 24' 3.060" N	1° 41' 16.044" E
6	51° 22' 44.323" N	1° 41' 30.864" E	13	51° 25' 27.649" N	1° 41' 16.429" E
7	51° 23' 2.085" N	1° 36' 6.194" E			

PART 3

Details of Licensed Marine Activities

Details of licensed marine activities

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

- (a) the deposit at sea of the substances and articles specified in paragraph 5 of Part 2 of this licence;
- (b) the construction of works in or over the sea and on or under the sea bed;
- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation; and
- (d) the disposal of up to 20,782m³ for drilled foundations or 288,000m³ for seabed preparation for foundations of inert material of natural origin within the offshore Order limits produced during construction drilling or seabed preparation for foundation works such as sandwave clearance, boulder clearance and pre-trenching and excavation of horizontal directional drilling exit pits at the site disposal reference issued by the MMO on behalf of Cefas within the extent of the Order limits seaward of MHWS, comprising—
 - (i) at site disposal reference TH153:

- (aa) 9,813.5m³ for drilled wind turbine generator foundations; and
 - (bb) 1,155m³ for drilled meteorological mast foundations; or
 - (cc) 230,400m³ for seabed preparation associated with wind turbine generator and meteorological mast foundations.
- (ii) at site disposal reference TH154:
- (aa) 9,813.5m³ for drilled foundations; and
 - (bb) 1,155m³ for drilled meteorological mast foundations; or
 - (cc) 57,600m³ for seabed preparation associated for wind turbine generator and meteorological mast foundations

(2) The disposal of material for the meteorological mast must be placed in either disposal site disposal reference TH153 or TH154.

2.—(1) Such activities are authorised in relation to the construction, maintenance and operation of—

(2) *Work No. 1*—

- (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 340 MW comprising up to 34 wind turbine generators each fixed to the seabed by one or more of the following foundation types, monopiles, three legged jackets on either pin piles or suction caisson anchoring; four legged jackets on pin piles or suction caisson anchoring and their associated foundations fitted with rotating blades and situated within the area shown on the works plan and further comprising (b) to (d) below;
- (b) up to one meteorological mast fixed to the seabed within the area shown on the works plan by an associated foundation (namely one or more of the following; monopoles, three legged jackets on either pin piles or suction caisson anchoring; four legged jackets on pin piles or suction caisson anchoring and their associated foundations);
- (c) up to one Floating Lidar Device (FLD) and up to one wave buoy fixed to the seabed within the area shown on the works plan;
- (d) a network of subsea inter-array cables and fibre optic cables within the area shown on the works plan between the wind turbine generators and between the wind turbine generators and Work No.2 including one or more cable crossings.

(3) In connection with such Work No. 1 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised scheme and which would not give rise to any materially new or materially different environmental effects from those assessed by the environmental statement and the provisions of this licence including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection measures such as the placement of rock or concrete mattresses, with or without frond devices;
- (c) the removal of material from the seabed required for the construction of Work No. 1 and the disposal of inert material of natural origin within the Order limits produced during construction drilling, seabed preparation for foundation works, cable installation preparation; and
- (d) removal of static fishing equipment.

(4) In connection with Work No. 1, ancillary works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

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

- (c) such other works as may be necessary or expedient (excluding any works relating to unexploded ordnances) for the purpose of or in connection with the construction or use of the authorised development and which would not give rise to any materially new or materially different environmental effects from those in the environmental statement.

PART 4

Conditions

Design parameters

1.—(1) Subject to paragraph (3), wind turbine generators forming part of the authorised project must not—

- (a) exceed a height of 250 metres when measured from HAT to the tip of the vertical blade;
- (b) exceed a height of 140 metres to the height of the centreline of the generator shaft forming part of the hub when measured from HAT;
- (c) exceed a rotor diameter of 220 metres;
- (d) be less than 480 metres from the nearest wind turbine generator in either direction perpendicular to the approximate prevailing wind direction (crosswind) or be less than 716 metres from the nearest wind turbine generator in either direction which is in line with the approximate prevailing wind direction (downwind); and
- (e) have a draught height of less than 22 metres from MHWS.

(2) References to the location of a wind turbine generator in paragraph (1) above are references to the centre point of that turbine.

2.—(1) The total number of meteorological masts must not exceed one and the total number of Floating Lidar Devices must not exceed one.

(2) Each meteorological mast must not exceed a height of 140 metres above HAT.

(3) Each meteorological mast must not have more than one supporting foundation.

3.—(1) The total length of the cables including fibre optic cables and the volume of their cable protection must not exceed the following—

<i>Work</i>	<i>Length</i>	<i>Cable protection volume</i>
Work No. 1 (inter-array)	64 kilometres	34,750m ³

(2) In relation to a wind turbine generator or meteorological mast, each jacket foundation must not have—

- (a) a width spacing between its legs at the level of the seabed which is more than 40 metres;
- (b) a pile diameter which is more than four metres in the case of pin piles or a suction caisson diameter which is more than 20 metres;
- (c) more than one pile per leg or more than one suction caisson per leg; and
- (d) more than four legs.

(3) In relation to a wind turbine generator or meteorological mast each monopile foundation forming part of the authorised development must not have a diameter which is more than ten metres.

4. The total amount of scour protection for the wind turbine generators and meteorological masts forming part of the authorised project must not exceed 1,151,917.3 m³.

5.—(1) None of the infrastructure listed in Work No.1 (a) to (c) may be installed within the structures exclusion zone, the coordinates of which are specified below—

Structures Exclusion Zone

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	51° 28' 13.973" N	1° 33' 56.681" E
2	51° 28' 15.183" N	1° 35' 29.471" E
3	51° 27' 23.628" N	1° 33' 46.501" E
4	51° 24' 45.426" N	1° 33' 51.671" E
5	51° 23' 1.317" N	1° 36' 20.336" E
6	51° 23' 2.085" N	1° 36' 6.194" E
7	51° 25' 33.041" N	1° 32' 30.523" E
8	51° 27' 40.652" N	1° 32' 53.134" E

(2) No part of any wind turbine generator, including its blades, may oversail into the structures exclusion zone.

Maintenance of the authorised development

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

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

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

- (a) major wind turbine component replacement;
- (b) painting wind turbine generators;
- (c) bird waste removal;
- (d) cable remedial burial;
- (e) array cable repairs;
- (f) access ladder replacement; and
- (g) wind turbine generator anode replacement.

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

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

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

Notifications and inspections

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

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all principal contractors notified to the MMO in accordance with **condition 7(13)**; and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with **condition 7(13)**;
- (b) within 28 days of receipt of a copy of this licence those persons referred to in sub-paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with **condition 7(13)** are permitted to carry out the licensed activities.

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

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

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

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

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

(7) The Kingfisher Information Service of Seafish must be notified electronically of details of the vessel routes, timings and locations relating to the construction of the authorised project or any part thereof—

- (a) at least fourteen days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and
- (b) as soon as reasonably practicable and no later than 24 hours of completion of all offshore activities.
- (c) Confirmation of notification must be provided to the MMO within five days.

(8) A notice to mariners must be issued at least ten days prior to the commencement of the licensed activities or any part of them advising of the start date of Work No. 1 (wind turbine generators or other offshore construction activities including array cables) and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO and UKHO within five days.

(9) The notices to mariners must be updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under **condition 12(b)**. Copies of all notices must be provided to the MMO and UKHO within five days.

(10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO. Copies of all notices must be provided to the MMO within 5 days.

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

(12) In case of exposure of cables on or above the seabed, the undertaker must within five days following the receipt by the undertaker of the final survey report from the periodic burial survey, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of the location and extent of exposure.

(13) The undertaker must provide to the MMO the name and function of any principal contractor appointed to engage in the licensed activities within seven days of appointment and any

changes to the supplied details provided must be notified to the MMO in writing within seven days of appointment.

Aids to navigation

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

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

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

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

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

(5) In the event that the provisions of **condition 7(12)** are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

9.—(1) Except as otherwise required by Trinity House the undertaker must paint all structures yellow (colour code RAL 1023) from at least HAT to a height as directed by Trinity House.

(2) Subject to sub-paragraph (1) above, unless the MMO otherwise directs, the undertaker must paint the remainder of the structures (not painted yellow in accordance with sub-paragraph (1) above) submarine grey (colour code RAL 7035).

Aviation safety

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

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

and the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph and of the completion of the construction of the authorised scheme. Copies of notifications must be provided to the MMO within 28 days.

Chemicals, drilling and debris

11.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised scheme, including any chemical agents placed within any monopile void, must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

(2) The undertaker must ensure that any coatings or treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive.

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

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

(5) The undertaker must ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations, and drilling mud is disposed of within the site disposal reference issued by the MMO on behalf of Cefas within the extent of the Order limits seaward of MHWS. Any other materials must be screened out before disposal at this site.

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

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

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

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

(10) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if it is reasonable to do so.

Force majeure

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

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

Pre-construction plans and documentation

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

- (a) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, to be approved in writing by the MMO in consultation with Trinity House, the MCA and Natural England which shows—
 - (i) the proposed location and choice of foundation of all wind turbine generators (in accordance with the recommendations for layout contained in MGN543), and the meteorological masts;
 - (ii) the height to the tip of the vertical blade; height to the centreline of the generator shaft forming part of the hub;
 - (iii) rotor diameter and spacing of all wind turbine generators;
 - (iv) the height of all lattice towers forming part of the meteorological mast;
 - (v) the length and arrangement of all cables (including fibre optic cables) comprising Work No. 1(d);
 - (vi) the dimensions of all jacket foundations;
 - (vii) the dimensions of all suction caissons;
 - (viii) the dimensions of all monopile foundations;
 - (ix) the exclusion zone as identified in the Biogenic Reef Mitigation Plan;to ensure conformity with the description of Work No. 1 and compliance with **conditions 1 to 4** above.
- (b) A construction programme and monitoring plan to include details of—
 - (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant delivery of materials and installation works;
 - (iii) proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with sub-paragraph (1)(h) and **conditions 16, 17 and 18**;
 - (iv) an indicative written construction programme for all wind turbine generators, offshore substation, meteorological mast, buoys and cables comprised in the works at paragraph 1 of Part 3 (licensed activities) of this Schedule (insofar as not shown in paragraph (ii) above); and
 - (v) details of the works to be undertaken within the structures exclusion zone, including the location of cables; and
 - (vi) the proposed timetable for undertaking of such works within the structures exclusion zone.with details pursuant to paragraph (iii) above to be submitted to the MMO in accordance with the following—
 - (aa) at least four months prior to the first survey, detail of the pre-construction surveys and an outline of all proposed monitoring;
 - (bb) at least four months prior to construction, detail on construction monitoring;
 - (cc) at least four months prior to commissioning, detail of post-construction (and operational) monitoring;unless otherwise agreed in writing with the MMO.
- (c) A construction method statement in accordance with the construction methods and relevant parameters assessed in the environmental statement and including details of—

- (i) foundation installation methodology, including drilling methods and disposal of drill arisings and having regard to the biogenic reef mitigation plan;
 - (ii) soft start procedures with specified duration periods;
 - (iii) cable installation;
 - (iv) contractors;
 - (v) the implementation of safety zones and their interaction with the structures exclusion zone; and
 - (vi) associated and ancillary works.
- (d) A project environmental management plan covering the period of construction and operation to include details of—
 - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised scheme in relation to all activities carried out;
 - (ii) the appointment and responsibilities of a fisheries liaison officer;
 - (iii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance; and
 - (iv) waste management and disposal arrangements.
- (e) A scour and cable protection plan providing details of the need, type, sources, quantity and installation methods for scour protection and cable protection, which must be updated and resubmitted for approval if changes to it are proposed following cable laying operations. No activities proposed in any updated scour and cable protection plan may be undertaken until the updated plan has been approved by MMO.
- (f) In the event that driven or part-driven pile foundations are proposed to be used a marine mammal mitigation protocol in accordance with the draft marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, following current best practice as advised by the relevant statutory nature conservation bodies.
- (g) A cable specification, installation and monitoring plan, to include—
 - (i) technical specification of offshore cables (including fibre optic cables) below MHWS, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
 - (ii) a detailed cable (including fibre optic cables) laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques (including cable protection); and
 - (iii) proposals for monitoring offshore cables (including fibre optic cables) including cable protection during the operational lifetime of the authorised scheme which includes a risk based approach to the management of unburied or shallow buried cables.
- (h) An offshore written scheme of archaeological investigation in relation to the offshore Order limits seaward of mean high water springs, which must be submitted four months prior to commencement of the licensed activities and must accord with the offshore archaeological draft written scheme of investigation and industry good practice, in consultation with the statutory historic body to include—
 - (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
 - (ii) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
 - (iii) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within four months of any survey being completed;
 - (iv) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones;

- (v) monitoring of archaeological exclusion zones during and post construction;
- (vi) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS (Online Access to the Index of archaeological investigations') form with a digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;
- (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme;
- (viii) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the offshore Order Limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities; and
- (ix) in the event that site investigation is required, details of an assessment of the significance and research questions raised by the results.
- (i) An offshore operations and maintenance plan, in accordance with the outline offshore operations and maintenance plan, to be submitted to the MMO prior to commencement of operation of the licensed activities and to provide for review and resubmission every three years during the operational phase.
- (j) An aids to navigation management plan to be approved in writing by the MMO following consultation with Trinity House, to include details of any ID lighting and details of how the undertaker will comply with the provisions of **condition 8** for the lifetime of the authorised scheme.
- (k) A site integrity plan, which must accord with the outline site integrity plan (as certified in accordance with **article 35**) and in accordance with the site integrity plan—
 - (i) be approved in writing by the MMO in consultation with Natural England—
 - (aa) four months in advance of any geophysical surveys being undertaken; and
 - (bb) a second time four months prior to the carry out of the next relevant noisy activity.
 - (ii) An offshore ornithological monitoring plan, in accordance with the in-principle offshore ornithological monitoring plan (as certified within **article 35**).

14.—(1) Pre-commencement and pre-construction archaeological investigations and material operations which involve intrusive seabed works must only take place in accordance with a specific offshore written scheme of investigation which—

- (a) has been properly informed by any necessary surveys as are required; and
- (b) has been submitted to and approved by the MMO accompanied by all relevant documentation that may be required

and that will be in accordance with the details set out in the offshore archaeological draft written scheme of investigation.

(2) Any pre-commencement works of an intrusive nature must not take place prior to the approval of the offshore written scheme of investigation submitted in accordance with subparagraph (1).

(3) Any archaeological reports produced in accordance with **condition 13** are to be approved by the MMO, in consultation with the relevant statutory historic bodies.

15.—(1) Each programme, statement, plan, protocol or scheme required to be approved under **conditions 13 and 14** must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) No licensed activity may commence until for that licensed activity the MMO has approved in writing any relevant programme, statement, plan, protocol or scheme required to be approved under **conditions 13 and 14** or approval has been given following an appeal in accordance with sub-paragraph (4).

(3) The MMO shall determine an application for approval made under **conditions 13 and 14** within a period of four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker

(4) Save in respect of any plan which secures mitigation to avoid adversely affecting the integrity of a European site, where the MMO fails to determine an application for approval under **condition 13 and 14** within the period referred to in sub-paragraph (3) the programme, statement, plan, protocol or scheme is deemed to be approved by the MMO

(5) Where the MMO is minded to refuse an application for approval made under **condition 13 or 14** and notifies the undertaker accordingly, or sub-paragraph (4) does not apply and the MMO fails to determine the application for approval under **condition 13 or 14** within the period prescribed, the undertaker may appeal to the Secretary of State in accordance with the procedure in Part 5 of this licence.

(6) The licensed activities must be carried out in accordance with the plans, protocols, statements, schemes and details approved under **conditions 13 and 14** or approved following an appeal under sub-paragraph (4) above, unless otherwise agreed in writing by the MMO.

(7) No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has given written approval to an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme. This must be in accordance with the MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues”. In providing its approval, the MMO must confirm in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations contained within MGN543 and its annexes.

Pre-construction monitoring and surveys

16.—(1) The undertaker must, in discharging **condition 13(b)**, submit details of a full sea floor coverage swath-bathymetry survey for written approval by the MMO in consultation with the relevant statutory bodies of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report; and—

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

(2) The pre-construction surveys referred to in sub-paragraph (1) to be undertaken, unless otherwise agreed by the MMO, are—

- (a) appropriate surveys to determine the location and extent of any biogenic reef features (*Sabellaria spinulosa*) inside the area(s) within the Order limits in which it is proposed to carry out construction works, as provided for in the biogenic reef mitigation plan;
- (b) a full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a, and side scan sonar, of the area(s) within the Order limits in which it is proposed to carry out construction works including an appropriate buffer area around the site of each work, inclusive of seabed anomalies or sites of historic or archaeological interest that lie within that buffer;

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

Construction monitoring

17.—(1) The undertaker must, in discharging **condition 13(b)**, submit details for approval by the MMO in consultation with Natural England of any proposed monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The survey proposals must specify each survey's objectives. The monitoring required is that for the measurements of noise generated by the installation of the first four piled foundations of each piled foundation type to be installed.

(2) The undertaker must carry out the surveys approved under sub-paragraph (1), including any further noise monitoring required in writing by the MMO, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with Natural England.

(3) The results of the initial noise measurements monitored in accordance with sub-paragraph (1) must be provided to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type. The assessment of this report by the MMO will determine whether any further noise monitoring is required. The MMO may request that further monitoring is undertaken, unless otherwise agreed in writing with the undertaker. If, in the opinion of the MMO in consultation with Natural England, the assessment shows a significantly different noise levels being generated to those assessed in the environmental statement or failures in mitigation, all piling activity must cease until an update to the MMMP and further monitoring requirements have been agreed.

(4) Construction monitoring must include vessel traffic monitoring by automatic identification system for the duration of the construction period. A report must be submitted to the MMO, Trinity House and the MCA at the end of each year of the construction period.

Post construction

18.—(1) The undertaker must, in discharging **condition 13(b)**, submit a full sea floor coverage swath-bathymetry survey for the MMO in consultation with relevant statutory bodies of proposed post-construction surveys, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and will enable the validation or otherwise of key predictions in the environmental statement.

(2) The post-construction surveys referred to in sub-paragraph (1) to be undertaken, unless otherwise agreed with the MMO must include appropriate surveys (including ground-truthing of the bathymetry surveys required under **condition 16(2)(a)**) to determine the location and extent of any biogenic reef features (*Sabellaria spinulosa*) inside the area(s) within the Order limits in which it is proposed to carry out construction works, as provided for in the Biogenic Reef Mitigation Plan.

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

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

(5) Post construction monitoring must include vessel traffic monitoring by automatic identification system for a duration of three years following the completion of construction of

authorised scheme. A report must be submitted to the MMO, Trinity House and the MCA at the end of each year of the three year period.

Reporting of impact pile driving

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

- (a) prior to the commencement of the licenced activities, information on the expected location, start and end dates of impact pile driving to satisfy the Marine Noise Registry's Forward Look requirements;
- (b) every year by 25 March following the commencement of pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements for any pile driving activities undertaken in the previous calendar year;
- (c) within 12 weeks of completion of impact pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements.

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

(3) For the purpose of this condition—

“Marine Noise Registry” means the database developed and maintained by JNCC on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas;

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

Fisheries liaison and coexistence plan

20. The undertaker must comply with the fisheries liaison and coexistence plan to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to **condition 7** and to address the interaction of the licensed activities with fishing activities.

Seabed preparation and clearance

21. Pre-commencement works relating to seabed preparation and clearance must only take place in accordance with a method statement which—

- (a) has been properly informed by any necessary surveys as are required;
- (b) has been submitted to and approved by the MMO accompanied by all relevant documentation that may be required; and
- (c) which has regard to the Biogenic Reef Mitigation Plan and the offshore archaeological draft written scheme of investigation (which are the plans as certified in accordance with **article 35**).

Dredge disposal

22.—(1) The licence holder must notify the MMO within 48 hours of the completion of the final authorised disposal at disposal site TH153, TH154 or TH155.

(2) Any man-made material, which is not deemed of archaeological interest by the reporting and recording protocols as set out in the offshore written scheme of archaeological investigation, must be separated from the dredged material and disposed of on land, where reasonably practical.

Decommissioning

23.—(1) No decommissioning activities may commence until a plan for the carrying out of the activities has been submitted to and approved in writing by the MMO.

(2) The plan must be submitted for approval at least six months before the intended start of the decommissioning activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(3) The plan must be implemented as approved.

Pre-commencement works

24.—(1) No pre-commencement works may be carried out until all details relevant to the pre-commencement works required by **Condition 13 and 21 in Schedule 11** of this Order have been submitted to and approved by the MMO.

(2) In addition to sub-section (1)—

- (a) the undertaker may submit, and
- (b) the MMO may request

any additional information deemed necessary to ensure adequate mitigation is secured in relation to the pre-commencement works.

(3) The details required pursuant to sub-sections (1) and (2) may be submitted separately and in advance of the details required to discharge the condition in advance of commencement.

(4) The details required pursuant to sub-sections (1) and (2) must be submitted at least four months prior to the commencement of licensed activities.

Certified documents

25.—(1) Subject to sub-paragraph (2) each programme, statement, plan, protocol or scheme listed in Schedule 13 of the Order (Documents to be certified under **Article 35**) which is submitted to the Secretary of State for certification pursuant to **Article 35** must be complied with as certified.

(2) Where the MMO is the discharging authority, it may approve an amendment or variation to the following documents certified under paragraph (1) provided such approval is not given except in relation to minor or immaterial changes or deviations where it has been demonstrated to the satisfaction of the MMO that the subject matter of the approval or agreement sought does not give rise to any materially new or materially different environmental effects to those assessed in the Environmental Statement: Offshore Archaeological Written Scheme of Investigation, Fishing Liaison and Coexistence Plan, Outline Offshore Operations and Maintenance Plan, Draft Marine Mammal Mitigation Protocol, In-principle Offshore Ornithology Monitoring Plan, Schedule of Mitigation, Shipping and Navigation Liaison Plan and the Outline Site Integrity Plan.

PART 5

Procedure for Appeals

1. The undertaker must submit to the Secretary of State, a copy of the application submitted to the MMO and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”).

2. The undertaker must on the same day provide copies of the appeal documentation to the MMO and any relevant consultee.

3. As soon as is practicable after receiving the appeal documentation, but in any event within 20 business days of receiving the appeal documentation, the Secretary of State must appoint a person and forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent.

4. The MMO and any relevant consultee must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph 3 and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person.

5. The appeal parties must make any counter-submissions to the appointed person within 20 business days of receipt of written representations pursuant to paragraph 4 above.

6. The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable. If the appointed person considers that further information is necessary to enable him to consider the appeal he must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

7. Any further information required pursuant to paragraph 6 must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 20 business days of that date.

8. On an appeal the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the MMO (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

9. The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under this paragraph.

10. The appointed person may proceed to a decision even though no written representations have been made within those time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

11. The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

12. If an approval is given by the appointed person pursuant to this Part, it is deemed to be an approval for the purpose of Part 4 of this Schedule as if it had been given by the MMO. The MMO may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) may not be taken to affect or invalidate the effect of the appointed person's determination.

13. Save where a direction is given pursuant to paragraph 14 requiring the costs of the appointed person to be paid by the MMO, the reasonable costs of the appointed person must be met by the undertaker.

14. On application by the MMO or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance on the award of costs or any guidance which may from time to time replace it.

PART 6

Arbitration

Any dispute under any provision of this licence, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at **Schedule 9** of the Order, by a single arbitrator to be agreed upon by the parties within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Centre for Effective Dispute Resolution.

SCHEDULE 12

Article 30

Deemed Licence under the 2009 Act – Export Cable System

PART 1

Interpretation

1. In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

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

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

“authorised deposits” means the substances and articles specified in Part 2, paragraph 2(3) of this licence;

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

“cable protection” means measures for cable crossings and where cable burial is not possible due to ground conditions, to protect cables and prevent loss of seabed sediment by use of grout bags, protective aprons, mattresses, flow energy dissipation (frond) devices or rock and gravel dumping;

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

“commence” means, (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for pre-construction surveys and monitoring and archaeological investigations and site clearance, and seabed preparation and clearance (b) in respect of any other works comprised in the authorised project, any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of site clearance, demolition of the sea wall, environmental surveys, investigations for the purpose of assessing ground conditions, diversion and laying of services, temporary structures or hard standing, and the words “commencement” and “commenced” will be construed accordingly;

“condition” means a condition in Part 4 of this licence;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

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

“European offshore marine site” has the meaning given in regulation 15 of the 2017 Regulations;

“European site” has the meaning given in regulation 24 of the 2017 Regulations;

“export” means the flow of electricity from a wind turbine generator or offshore substation into a distribution network or transmission system for Great Britain, and “export” also includes the conveying of, or importing of, electricity between the distribution network or transmission system for Great Britain and the wind turbine generator or offshore substation;

“fisheries liaison and coexistence plan” means the document certified as the Fisheries Liaison and Co-existence Plan by the Secretary of State for the purposes of this Order;

“HAT” means highest astronomical tide;

“jacket foundation” means a steel jacket lattice-type structure constructed of steel which is fixed to the seabed at two or more points with pin piles or suction caissons and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment, and “discrete jacket foundation types” includes pre-piled or post-piled jackets, three-legged or four legged jackets, or straight or battered leg jackets;

“outline site integrity plan” means the document certified as the outline site integrity plan by the Secretary of State for the purposes of the Order;

“pre-commencement works” means archaeological investigations, pre-construction surveys and monitoring and seabed preparation and clearance;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this licence;

“LAT” means lowest astronomical tide;

“licensed activities” means the activities specified in Part 2 of this licence;

“maintain” includes inspect, maintain, repair, adjust, and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of **Schedule 1** (ancillary works) and any cable or any component part of any offshore substation, or meteorological mast described in Part 1 of **Schedule 1** (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” is construed accordingly;

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

“MCA” means the Maritime and Coastguard Agency;

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

“monopile foundation” means a steel pile, typically cylindrical, driven or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“notice to mariners” means a notice issued by the undertaker to mariners to inform them of issues that affect the safety of navigation;

“offshore archaeological draft written scheme of investigation” means the document certified as the offshore archaeological draft written scheme of investigation by the Secretary of State for the purposes of this Order;

“offshore cables” means any Alternating Current (AC) cables offshore and includes fibre optic cables either within the cable or laid alongside;

“offshore substation” means a platform attached to the seabed by means of a foundation, with one or more decks, whether open or fully clad, accommodating electrical power transformers, instrumentation, protection and control systems, neutral earthing resistors, reactive compensation, standby electrical generation equipment, fuelling facilities, auxiliary and uninterruptible power supply systems and transformers, accommodation or emergency shelter, craneage, metering stations, meteorological equipment, helicopter landing facilities, messing facilities, potable water storage, black water separation equipment, control hub, drainage facilities, access equipment, J-tubes, marking and lighting and other associated equipment and facilities to enable the transmission of electronic communications and for electricity to be collected at, and exported from, the platform and, depending on the type of substation, low,

medium and high voltage switch gear, or AC filters or AC/DC converter with switching devices;

“offshore Order limits” means the limits shown on the works plan within which the authorised scheme may be carried out, whose grid coordinates are set out in Part 2 paragraph 6 of this licence;

“offshore works plan” means the plan certified as the works plan (offshore) by the Secretary of State for the purposes of the Order;

“the Order” means the Thanet Extension Offshore Wind Farm Order 201X;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of the Order and to the extent the definition of ‘maintain’ is used within the document it will have the same interpretation as ‘maintain’ for the purposes of this Order;

“principal contractor” has the same meaning as in section 2 of the Construction (Design and Management) Regulation 2015;

“relevant site” means a European offshore marine site and a European site;

“ringed plover mitigation plan” means the mitigation plan document to be produced prior to construction, in accordance with the principles contained within the Onshore Biodiversity chapter of the Environmental Statement;

“Saltmarsh Mitigation, Reinstatement and Monitoring Plan” means the document certified as the Saltmarsh Mitigation, Reinstatement and Monitoring Plan by the Secretary of State for the purposes of this Order;

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

“structures exclusion zone” means the area hatched green on the offshore works plan;

“suction caisson” means large diameter steel cylindrical shells which penetrate the seabed assisted by a hydrostatic pressure differential for fixity of the structure it supports;

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

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

“undertaker” means Vattenfall Wind Power Ltd;

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

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

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

3. Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

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

- (a) Marine Management Organisation
Marine Licensing

- Lancaster House
Hampshire Court
Newcastle Business Park
Newcastle upon Tyne
NE4 7YH
Tel: 0300 123 1032;
- (b) Marine Management Organisation (local office)
Fish Market
Rock-a-Nore Road
Hastings
East Sussex
TN34 3DW
Tel: 0142442410;
- (c) Trinity House
Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;
- (d) The United Kingdom Hydrographic Office
Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;
- (e) Maritime and Coastguard Agency
Navigation Safety Branch
Bay 2/20, Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 020 3817 2433;
- (f) Centre for Environment, Fisheries and Aquaculture Science
Pakefield Road
Lowestoft
Suffolk
NR33 0HT
Tel: 01502 562 244;
- (g) Natural England
Area 1C, Nobel House
17 Smith Square
London
SW1P 2AL
Tel: 0300 060 4911;

- (h) Historic England
4th Floor, Cannon Bridge House
25 Dowgate Hill,
London
EC4R 2YA
020 7973 3700

PART 2

Licensed Marine Activities - General

1. This licence remains in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

2. The provisions of section 72 of the 2009 Act apply to this licence except that the provisions of section 72(7) relating to the transfer of the licence only apply to a transfer not falling within **article 5** (benefit of the Order).

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

4. Any amendments to or variations from the approved plans, protocols or statements must demonstrate that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

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

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and
- (g) marine coatings, other chemicals and timber.

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

Current Cable Corridor

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	51° 19' 22.104" N	1° 22' 19.234" E	25	51° 17' 56.042" N	1° 27' 8.120" E
2	51° 19' 24.560" N	1° 25' 18.600" E	26	51° 17' 58.278" N	1° 26' 14.982" E
3	51° 19' 38.342" N	1° 26' 20.851" E	27	51° 18' 46.821" N	1° 23' 12.172" E
4	51° 19' 36.695" N	1° 29' 9.324" E	28	51° 18' 52.541" N	1° 22' 57.260" E

5	51° 19' 43.095" N	1° 29' 43.272" E	29	51° 18' 52.380" N	1° 22' 16.747" E
6	51° 20' 14.158" N	1° 29' 56.342" E	30	51° 19' 5.968" N	1° 21' 41.601" E
7	51° 20' 37.339" N	1° 32' 25.827" E	31	51° 19' 6.137" N	1° 21' 41.660" E
8	51° 21' 43.399" N	1° 33' 16.785" E	32	51° 19' 7.241" N	1° 21' 41.937" E
9	51° 23' 14.222" N	1° 34' 45.212" E	33	51° 19' 8.626" N	1° 21' 42.154" E
10	51° 23' 56.937" N	1° 34' 47.892" E	34	51° 19' 10.154" N	1° 21' 42.190" E
11	51° 23' 22.059" N	1° 35' 37.689" E	35	51° 19' 10.485" N	1° 21' 42.234" E
12	51° 23' 7.263" N	1° 35' 36.158" E	36	51° 19' 10.812" N	1° 21' 42.364" E
13	51° 22' 46.107" N	1° 35' 21.177" E	37	51° 19' 11.135" N	1° 21' 42.594" E
14	51° 21' 27.502" N	1° 34' 2.352" E	38	51° 19' 12.534" N	1° 21' 44.013" E
15	51° 21' 15.621" N	1° 34' 0.605" E	39	51° 19' 12.994" N	1° 21' 44.441" E
16	51° 20' 34.127" N	1° 33' 19.312" E	40	51° 19' 12.995" N	1° 21' 44.448" E
17	51° 20' 18.448" N	1° 33' 21.294" E	41	51° 19' 18.092" N	1° 22' 2.648" E
18	51° 20' 8.251" N	1° 32' 54.654" E	42	51° 18' 25.807" N	1° 27' 42.379" E
19	51° 19' 48.474" N	1° 30' 48.676" E	43	51° 19' 5.515" N	1° 27' 38.768" E
20	51° 19' 41.109" N	1° 30' 36.146" E	44	51° 19' 6.818" N	1° 26' 4.122" E
21	51° 19' 17.641" N	1° 30' 27.963" E	45	51° 18' 53.151" N	1° 25' 40.946" E
22	51° 19' 3.953" N	1° 29' 13.879" E	46	51° 18' 38.800" N	1° 25' 25.266" E
23	51° 19' 4.793" N	1° 28' 30.568" E	47	51° 18' 22.978" N	1° 26' 25.434" E
24	51° 18' 2.205" N	1° 28' 36.240" E			

PART 3

Details of Licensed Marine Activities

Details of licensed marine activities

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

- (a) the deposit at sea of the substances and articles specified in paragraph 5 of Part 2 of this licence;
- (b) the construction of works in or over the sea or on or under the sea bed;

- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation; and
- (d) the disposal of up to 1,449,600m³ and 1,000m³ of inert material of natural origin within the offshore Order limits produced during construction drilling or seabed preparation for foundation works and cable installation and preparation (including fibre optic cables) such as sandwave clearance, boulder clearance and pre-trenching at the site disposal references issued by the MMO on behalf of Cefas within the extent of the Order limits seaward of MHWS, comprising—
 - (i) at site disposal reference TH153:
 - (aa) 360,000m³ for sandwave clearance; and
 - (bb) 9,600m³ for offshore substation foundations (dredging); or
 - (cc) 1,000m³ for offshore substation foundations (drilling).
 - (ii) at site disposal reference TH154:
 - (aa) 60,000m³ for sandwave clearance; and
 - (bb) 9,600m³ for offshore substation foundations (dredging); or
 - (cc) 1,000m³ for offshore substation foundations (drilling).
 - (iii) At site disposal reference TH155:
 - (aa) 720,000m³ for sandwave clearance.

(2) The disposal of material for the offshore substation must be placed in either disposal site disposal reference TH153 or TH154.

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

(1) *Work No. 2*—An offshore substation fixed to the seabed within the area shown on the works plan by associated foundation[s], namely one of the following: monopile, or jacket foundation on either pin piles or suction caisson anchoring.

(2) *Work No. 3*— Up to four offshore subsea export cables and fibre optic cables to export electricity and transmit electronic communications from the offshore substation or wind farm array to the shore along routes within the Order Limits seaward of MLWS including one or more cable crossings as shown and demarcated on the works plan.

(3) *Work No. 3A*— Up to four subsea export cables and fibre optic cables to export electricity and transmit electronic communications from the offshore substation or wind farm array to the shore between Work No 3 and 3B seaward of MHWS at Pegwell Bay and where required works to facilitate horizontal directional drilling.

(4) *Work No. 3B*—

- (a) In the event that the transition joint bays are located below ground within Pegwell Bay County Park (Work No. 4A) and export cables are required to cross the seawall by horizontal directional drilling, onshore connection works, including up to four export cables and fibre optic cables to export electricity and transmit electronic communications from the offshore substation or wind farm array to the shore; and
- (b) In the event that the export cables cross the seawall by trenching, onshore connection works consisting of—
 - (i) up to four export cables and fibre optic cables to export electricity and transmit electronic communications from the offshore substation or wind farm array to the shore;
 - (ii) a temporary cofferdam to facilitate the installation of cables through the sea wall; and
 - (iii) partial demolition of the sea wall and subsequent reinstatement of the sea wall on its existing alignment.

(5) All such works must be constructed, maintained and operated as shown and demarcated on the works plans.

(6) In connection with such Work Nos. 2, 3, 3A and 3B and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised scheme and which would not give rise to any materially new or materially different environmental effects from those assessed by the environmental statement and the provisions of this licence including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection measures such as the placement of rock or concrete mattresses, with or without frond devices;
- (c) temporary landing places, moorings or other means of accommodating vessels in the construction or maintenance of the authorised scheme;
- (d) marking buoys, beacons, fenders and other navigational warning or ship impact protection works;
- (e) temporary works below MHWS for the benefit or protection of land or structures affected by the authorised development;
- (f) removal of static fishing equipment; and
- (g) such other works as may be necessary or expedient (excluding any works relating to unexploded ordnances) for the purpose of or in connection with the construction or use of the authorised development and which would not give rise to any materially new or materially different environmental effects from those recorded in the environmental statement.

PART 4

Conditions

Design parameters

1.—(1) The total number of offshore substations forming part of the authorised scheme must not exceed one.

(2) The offshore substation described in sub-paragraph (1) must not be placed within the area identified on the offshore works plan as the structures exclusion zone.

(3) The dimensions of any offshore substation forming part of the authorised project (excluding towers, helipads, masts and cranes) must not exceed 55 metres in height when measured from HAT, 70 metres in length and 50 metres in width.

(4) In relation to an offshore substation, each jacket foundation must not have—

- (a) a width spacing between its legs at the level of the seabed which is more than 40 metres;
- (b) more than one pile per leg or more than one suction caisson per leg.

2. The total length of the cables including fibre optic cables and the volume of their cable protection must not exceed the following—

<i>Work</i>	<i>Length</i>	<i>Cable protection volume</i>
Work No. 1 (export cable)	120 kilometres	145,000m ³

3. The total amount of scour protection for the offshore substation, forming part of the authorised project must not exceed 39,269.9 m³

4. None of the infrastructure listed in Work No.(2), nor Ancillary Works (a), (c) and (d) shall be installed within the structures exclusion zone, whose coordinates are specified below—

Structures Exclusion Zone

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	51° 28' 13.973" N	1° 33' 56.681" E
2	51° 28' 15.183" N	1° 35' 29.471" E
3	51° 27' 23.628" N	1° 33' 46.501" E
4	51° 24' 45.426" N	1° 33' 51.671" E
5	51° 23' 1.317" N	1° 36' 20.336" E
6	51° 23' 2.085" N	1° 36' 6.194" E
7	51° 25' 33.041" N	1° 32' 30.523" E
8	51° 27' 40.652" N	1° 32' 53.134" E

Maintenance of the authorised development

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

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

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

- (a) offshore substation component replacement;
- (b) painting offshore substation;
- (c) bird waste removal;
- (d) export cable remedial burial;
- (e) export cable repairs;
- (f) access ladder replacement; and
- (g) substation anode replacement.

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

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

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

Notifications and inspections

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

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all principal contractors notified to the MMO in accordance with **condition 6(13)**; and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with **condition 6(13)**;
- (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with **condition 6(13)** are permitted to carry out the licensed activities.

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

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

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

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

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

(7) Kingfisher Information Service of Seafish must be notified electronically of details regarding the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part—

- (a) at least fourteen days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and
- (b) on completion of construction of all offshore activities.

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

(8) A notice to mariners must be issued at least ten days prior to the commencement of the licensed activities or any part of them advising of the start date of Work No. 2 and the expected vessel routes from the construction ports to the relevant location. A second notice to mariners must be issued advising of the start date of Work Nos. 3, 3A and 3B and the route of the sub-sea cables. Copies of all notices must be provided to the MMO and UKHO within five days.

(9) The notices to mariners must be updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under **condition 11(c)**. Copies of all notices must be provided to the MMO and UKHO within five days.

(10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO. Copies of all notices must be provided to the MMO within 5 days.

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

(12) In case of exposure of cables on or above the seabed, the undertaker must within five days following the receipt by the undertaker of the final survey report from the periodic burial survey, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of the location and extent of exposure.

(13) The undertaker must provide to the MMO the name and function of any principal contractor appointed to engage in the licensed activities within seven days of appointment and any changes to the supplied details provided must be notified to the MMO in writing within seven days of appointment.

Aids to navigation

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

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

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

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan agreed pursuant to **condition 11(k)** using the reporting system provided by Trinity House.

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

(5) In the event that the provisions of **condition 9(11)** are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

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

(2) Subject to sub-paragraph (1) above, unless the MMO otherwise directs, the undertaker must paint the remainder of the structures (not painted yellow in accordance with sub-paragraph (1) above) submarine grey (colour code RAL 7035).

Chemicals, drilling and debris

9.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised scheme must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

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

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

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

(5) The undertaker must ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations, and drilling mud is disposed of within site disposal reference issued by the MMO on behalf of Cefas within the extent of the Order limits seaward of MHWS. Any other materials must be screened out before disposal at this site.

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

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

(8) The undertaker must undertake the survey agreed under **condition 11(1)(i)(iii)** following the swath-bathymetry survey referred to in **condition 14(2)(c)**. Should any such obstructions resulting from burial of Work No. 3 (export cables) be identified which, in the reasonable opinion of the MMO, may be considered to interfere with fishing, the undertaker must take such steps to remove them as the MMO in its reasonable opinion may require.

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

(10) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under **condition 11(1)(e)(i)**.

(11) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if reasonable to do so.

Force majeure

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

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

Pre-construction plans and documentation

11.—(1) The licensed activities or any part of those activities within Work Nos. 3A and 4B apart from horizontal directional drilling works and the temporary extension to the sea wall and the temporary cofferdam within Work No. 3B must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO—

- (a) A contamination prevention plan which must contain details of necessary measures in order to ensure that construction works undertaken within Work No. 3B will not release any contaminants into the marine environment.
- (b) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, to be approved in writing by the MMO in consultation with Trinity House, the MCA and Natural England which shows—
 - (i) the proposed location and choice of foundation of the offshore substation;
 - (ii) the height, length and width of the offshore substation;
 - (iii) the length and arrangement of all cables and fibre optic cables comprising Work Nos. 3, 3A and 3B;
 - (iv) the dimensions of all jacket foundations;

- (v) the proposed layout of the offshore substations including any exclusion zones identified under sub-paragraph (vii);
 - (vi) a plan showing the indicative layout of all offshore substations including all exclusion zones (insofar as not shown in (v) above) and showing the indicative programming of particular works as set out in the indicative programme to be provided under sub-paragraph (iii); and
 - (vii) any exclusion zones/micrositing requirements identified in the biogenic reef mitigation plan.
 - (viii) to ensure conformity with the description of Works Nos. 2, 3, 3A and 3B and compliance with **conditions 1 to 4** above.
- (c) A construction programme and monitoring plan to include details of—
- (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant delivery of materials and installation works having due regard to seasonal restrictions as assessed within the ES;
 - (iii) proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with sub-paragraph (i) and **conditions 14, 15 and 16**; and
 - (iv) an indicative written construction programme for the offshore substations and cables comprised in the works at paragraph 3(1) to (3) of Part 3 (licensed activities) of this Schedule (insofar as not shown in paragraph (ii) above);
 - (v) with details pursuant to paragraph (iii) above to be submitted to the MMO in accordance with the following—
 - (aa) at least four months prior to the first survey, detail of the pre-construction surveys and an outline of all proposed monitoring;
 - (bb) at least four months prior to construction, detail on construction monitoring;
 - (cc) at least four months prior to commissioning, detail of post-construction (and operational) monitoring;
 unless otherwise agreed in writing with the MMO.
- (d) A construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—
- (i) foundation installation methodology, including drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation works and having regard to the Biogenic Reef Mitigation Plan;
 - (ii) soft start procedures with specified duration periods;
 - (iii) offshore substation location and installation, including scour protection;
 - (iv) cable installation, including cable landfall and cable protection;
 - (v) contractors;
 - (vi) vessels and vessels transit corridors, which minimises disturbance to red throated divers; and
 - (vii) associated and ancillary works.
- (e) A project environmental management plan covering the period of construction and operation to include details of—
- (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised scheme in relation to all activities carried out;
 - (ii) the appointment and responsibilities of a fisheries liaison officer;
 - (iii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance; and

- (iv) waste management and disposal arrangements.
- (f) A scour protection management and cable protection plan providing details of the need, type, sources, quantity and installation methods for scour protection and cable protection, which plan must be updated and resubmitted for approval if changes to it are proposed following cable laying operations.
- (g) In the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol in accordance with the draft marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, following current best practice as advised by the relevant statutory nature conservation bodies.
- (h) A cable specification, installation and monitoring plan, to include—
 - (i) technical specification of offshore cables (including fibre optic cables) below MHWS, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
 - (ii) a detailed cable (including fibre optic cables) laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques, including cable protection; and
 - (iii) proposals for monitoring offshore cables (including fibre optic cables) including cable protection during the operational lifetime of the authorised scheme which includes a risk based approach to the management of unburied or shallow buried cables.
- (i) An offshore written scheme of archaeological investigation in relation to the offshore Order limits seaward of mean high water, which must be submitted four months prior to commencement of the licensed activities and must accord with the offshore archaeological written scheme of investigation and industry good practice, in consultation with the statutory historic body to include—
 - (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
 - (ii) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
 - (iii) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within four months of any survey being completed;
 - (iv) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones;
 - (v) monitoring of archaeological exclusion zones during and post construction;
 - (vi) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS (Online Access to the Index of archaeological investigations') form with a digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;
 - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme;
 - (viii) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the offshore Order Limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities; and
 - (ix) in the event that site investigation is required, details of an assessment of the significance and research questions raised by the results.
- (j) An offshore operations and maintenance plan, in accordance with the outline offshore operations and maintenance plan, to be submitted to the MMO at least four months prior

to commencement of operation of the licensed activities and to provide for review and resubmission every three years during the operational phase.

- (k) An aids to navigation management plan to be approved in writing by the MMO following consultation with Trinity House, to include details of any ID lighting and details of how the undertaker will comply with the provisions of **condition 7** for the lifetime of the authorised scheme.
- (l) A site integrity plan, which must accord with the outline site integrity plan (as certified in accordance with **article 35**) and in accordance with the site integrity plan—
 - (i) be approved in writing by the MMO in consultation with Natural England:
 - (aa) four months in advance of any geophysical surveys being undertaken; and
 - (bb) a second time four months prior to the carry out of the next relevant noisy activity
- (m) In the event that the surveys carried out in accordance with **condition 15(2)(e)** find that ringed plover are present within the Order limits, a ringed plover mitigation plan, the intention of which is to prevent disturbance to ringed plover, following current best practice as advised by Natural England.

12.—(1) Pre-commencement and pre-construction archaeological investigations and material operations which involve intrusive seabed works must only take place in accordance with a specific offshore written scheme of investigation which—

- (a) has been properly informed by any necessary surveys as are required; and
- (b) has been submitted to and approved by the MMO accompanied by all relevant documentation that may be required

and that will be in accordance with the details set out in the offshore archaeological draft written scheme of investigation.

(2) Any pre-commencement works of an intrusive nature must not take place prior to the approval of the offshore written scheme of investigation submitted in accordance with sub-paragraph (1).

(3) Any archaeological reports produced in accordance with **condition 11(1)(i)(vi)** are to be agreed the MMO, in consultation with the relevant statutory historic bodies.

13.—(1) Each programme, statement, plan, protocol or scheme required to be approved under **conditions 11 and 12** must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) No licensed activity may commence until for that licensed activity the MMO has approved in writing any relevant programme, statement, plan, protocol or scheme required to be approved under **conditions 11 and 12** or approval has been given following an appeal in accordance with sub-paragraph (4).

(3) The MMO shall determine an application for approval made under **conditions 11 and 12** within a period of four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(4) Save in respect of any plan which secures mitigation to avoid adversely affecting the integrity of a European site, where the MMO fails to determine an application for approval under **conditions 11 and 12** within the period referred to in sub-paragraph (3) the programme, statement, plan, protocol or scheme is deemed to be approved by the MMO

(5) Where the MMO is minded to refuse an application for approval made under **conditions 11 or 12** and notifies the undertaker accordingly, or sub-paragraph (4) does not apply and the MMO fails to determine the application for approval under **condition 13** within the period prescribed, the undertaker may appeal to the Secretary of State in accordance with the procedure in Part 5 of this licence.

(6) The licensed activities must be carried out in accordance with the plans, protocols, statements, schemes and details approved under **conditions 11 and 12** or approved following an appeal under sub-paragraph (4) above, unless otherwise agreed in writing by the MMO.

(7) No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has given written approval to an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency, response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme. This must be in accordance with the MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues”. In providing its approval the MMO must confirm in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations contained within MGN543 and its annexes.

14.—(1) Each programme, statement, plan, protocol or scheme required to be approved relating to Work Nos. s 3A and 3B may, where required, be approved by more than one statutory body in whole or in part.

(2) If all or any part of any document referred to in sub-paragraph (1) requires approval by more than one discharging authority, those discharging authorities will consult with one another prior to giving their requisite approvals in accordance with the provisions of this Order.

Pre-construction monitoring and surveys

15.—(1) The undertaker must, in discharging **condition 11(1)(d)**, submit details of a full sea floor coverage swath-bathymetry survey for written approval by the MMO in consultation with relevant statutory bodies of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report; and—

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

(2) The pre-construction surveys referred to in sub-paragraph (1) to be undertaken, unless otherwise agreed by the MMO, are—

- (a) appropriate surveys to determine the location and extent of any biogenic reef features (*Sabellaria spinulosa*) inside the area(s) within the Order limits in which it is proposed to carry out construction works, as provided for in the Biogenic Reef Mitigation Plan;
- (b) In the event—
 - (i) cable protection is to be installed within the Goodwin Sands MCZ in accordance with condition 11(1)(b), ground truthing of the geophysical surveys carried out in accordance with sub-paragraph (c), using drop down video and to be focussed on the areas where cable protection is to be installed to monitor epifaunal communities and inundation by sand;
 - (ii) sandwave clearance is required within the Goodwin Sands MCZ, interpreted geophysical monitoring to monitor changes in sediment type;
- (c) appropriate surveys in order to monitor the impact of development authorised by the Order within any areas of saltmarsh, as provided for in the Saltmarsh Mitigation, Reinstatement and Monitoring Plan;
- (d) a full sea floor coverage swath-bathymetry plansurvey that meets the requirements of IHO S44ed5 Order 1a, and side scan sonar, of the area(s) within the Order limits in which it is proposed to carry out construction works including an appropriate buffer area around

the site of each work, inclusive of seabed anomalies or sites of historic or archaeological interest that lie within that buffer;

- (e) appropriate surveys to determine the location or presence of ringed plover inside the area(s) within the Order limits in which it is proposed to carry out construction works, which will inform the need for a ringed plover mitigation plan.

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

Construction monitoring

16.—(1) The undertaker must, in discharging **condition 11(1)(d)**, submit details for approval by the MMO in consultation with Natural England of any proposed monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The survey proposals must specify each survey's objectives. The monitoring required is that for the measurement of noise generated by the installation of the first four piled foundations of each piled foundation type to be installed.

(2) The undertaker must carry out the surveys approved under sub-paragraph (1) including any further noise monitoring required in writing by the MMO, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with Natural England.

(3) The results of the initial noise measurements monitored in accordance with sub-paragraph (1) must be provided to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type. The assessment of this report by the MMO will determine whether any further noise monitoring is required. The MMO may request that further monitoring is undertaken, unless otherwise agreed in writing with the undertaker. If, in the opinion of the MMO in consultation with Natural England, the assessment shows significantly different noise levels being generated to those assessed in the environmental statement or failures in mitigation, all piling activity must cease until an update to the MMMP and further monitoring requirements have been agreed.

Post construction

17.—(1) The undertaker must, in discharging **condition 11(1)(d)**, submit details of a full sea floor coverage swath-bathymetry survey for approval by the MMO in consultation with relevant statutory bodies of proposed post-construction surveys, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position or will enable the validation or otherwise of key predictions in the environmental statement.

(2) The post-construction surveys referred to in sub-paragraph (1) to be undertaken, unless otherwise agreed with the MMO, are—

- (a) appropriate surveys (including ground-truthing of the bathymetry surveys required under **Condition 15(2)(d)**) to determine the location and extent of any biogenic reef features (*Sabellaria spinulosa*) inside the area(s) within the Order limits in which it is proposed to carry out construction works, as provided for in the Biogenic Reef Mitigation Plan;
- (b) In the event—
 - (i) cable protection has been installed within the Goodwin Sands MCZ, ground truthing of the geophysical surveys carried out in accordance with sub-paragraph (2)(d), using drop down video and to be focussed on the areas where cable protection has been installed to monitor epifaunal communities and inundation by sand;
 - (ii) sandwave clearance is required within the Goodwin Sands MCZ, interpreted geophysical monitoring to monitor changes in sediment type;

- (c) appropriate surveys in order to monitor the impact of development authorised by the Order within any areas of saltmarsh, as provided for in the Saltmarsh Mitigation, Reinstatement and Monitoring Plan;
- (d) within twelve months of completion of the licensed activities, one full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a across the area(s) within the Order limits in which construction works were carried out to assess any changes in bedform topography and such further monitoring or assessment as may be agreed to ensure that cables have been buried or protected.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (2)(c) and (2)(d) for up to 3 years post-construction, which could be non-consecutive years, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation bodies.

(4) Following installation of cables, the cable monitoring plan required under **condition 11(h)** must be updated with the results of the post installation surveys. The plan must be implemented during the operational lifetime of the project and reviewed as specified within the plan, following cable burial surveys, or as instructed by the MMO.

(5) In the event that cable protection or sandwave clearance is installed within the Goodwin Sands MCZ, the undertaker must conduct epifaunal monitoring and carry out ground truthed geophysical surveys for a total period of three years, which is capable of being undertaken continuously or in one or more stages.

Seasonal restriction in respect of non-breeding waterbirds

18.—(1) The undertaker must ensure that no percussive piling activity takes place within Work Nos 3A and 3B between 1st October to 31st March (inclusive) of any year.

(2) The undertaker must ensure that no construction works or planned operation and maintenance works take place within Work Nos. 3A and 3B between 1st October to 31st March (inclusive) of any year.

Reporting of impact pile driving

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

- (a) prior to the commencement of the licenced activities, information on the expected location, start and end dates of impact pile driving to satisfy the Marine Noise Registry's Forward Look requirements;
- (b) every year by 25 March following the commencement of pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements for any pile driving activities undertaken in the previous calendar year;
- (c) within 12 weeks of completion of impact pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements

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

(3) For the purpose of this condition—

“Marine Noise Registry” means the database developed and maintained by JNCC on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas;

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

Notification of Work No. 3B

20. No part of Work No. 3B may commence until a notification is provided in writing to the MMO confirming which one option of Work No. 3B(a) or 3B(b) will be constructed. The notification must include the anticipated timing of the proposed works being undertaken.

Cable exclusion zone

21.—(1) No cable installation or cable protection works may take place within the cable exclusion zone as demarcated in the offshore works plan.

(2) The grid coordinates for the cable exclusion zone are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	51° 19' 41.336" N	1° 29' 33.940" E	8	51° 19' 22.637" N	1° 24' 55.430" E
2	51° 19' 28.757" N	1° 29' 34.210" E	9	51° 19' 24.186" N	1° 24' 50.925" E
3	51° 19' 28.757" N	1° 27' 16.659" E	10	51° 19' 24.560" N	1° 25' 18.600" E
4	51° 19' 26.656" N	1° 27' 16.644" E	11	51° 19' 38.342" N	1° 26' 20.851" E
5	51° 19' 22.807" N	1° 27' 10.612" E	12	51° 19' 36.695" N	1° 29' 9.324" E
6	51° 19' 22.993" N	1° 25' 23.440" E			
7	51° 19' 22.464" N	1° 25' 20.184" E			

Fisheries liaison and coexistence plan

22. The undertaker must comply with the fisheries liaison and coexistence plan to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to **condition 6** and to address the interaction of the licensed activities with fishing activities.

Seabed preparation and clearance

23. Pre-commencement works relating to seabed preparation and clearance must only take place in accordance with a method statement which—

- (a) has been properly informed by any necessary surveys as are required;
- (b) has been submitted to and approved by the MMO accompanied by all relevant documentation that may be required; and
- (c) and which has regard to the Biogenic Reef Mitigation Plan and the offshore archaeological draft written scheme of investigation (which are the plans as certified in accordance with **article 35**).

Dredge disposal

24.—(1) The licence holder must notify the MMO within 48 hours of the completion of the final authorised disposal at disposal site reference TH153 or TH154.

(2) Any man-made material, which is not deemed of archaeological interest by the reporting and recording protocols as set out in the offshore written scheme of archaeological investigation, must be separated from the dredged material and disposed of on land, where reasonably practical.

Aviation safety

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

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

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

Decommissioning

26.—(1) No decommissioning activities may commence until a plan for the carrying out of the activities has been submitted to and approved in writing by the MMO.

(2) The plan must be submitted for approval at least six months before the intended start of the decommissioning activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(3) The plan must be implemented as approved.

Pre-commencement works

27.—(1) No pre-commencement works may be carried out until all details relevant to the pre-commencement works required by **Condition 11 and 23 in Schedule 12** of this Order have been submitted to and approved by the MMO.

(2) In addition to sub-section (1)—

- (a) the undertaker may submit, and
- (b) the MMO may request

any additional information deemed necessary to ensure adequate mitigation is secured in relation to the pre-commencement works.

(3) The details required pursuant to sub-sections (1) and (2) may be submitted separately and in advance of the details required to discharge the condition in advance of commencement.

(4) The details required pursuant to sub-sections (1) and (2) may be submitted at least four months prior to the commencement of licenced activities.

Certified documents

28.—(1) Subject to paragraph (2) each programme, statement, plan, protocol or scheme listed in Schedule 13 of the Order (Documents to be certified under **Article 35**) which is submitted to the Secretary of State for certification pursuant to **Article 35** must be complied with as certified.

(2) (Where the MMO is the discharging authority, it may approve an amendment or variation to the following documents certified under paragraph (1) provided such approval is not given except in relation to minor or immaterial changes or deviations where it has been demonstrated to the satisfaction of the MMO that the subject matter of the approval or agreement sought does not give rise to any materially new or materially different environmental effects to those assessed in the Environmental Statement: Offshore Archaeological Written Scheme of Investigation, Fishing Liaison and Coexistence Plan, Outline Offshore Operations and Maintenance Plan, Draft Marine

Mammal Mitigation Protocol, In-principle Offshore Ornithology Monitoring Plan, Shipping and Navigation Liaison Plan, Schedule of Mitigation, Saltmarsh Mitigation, Reinstatement and Monitoring Plan and the Outline Site Integrity Plan.

PART 5

Procedure for appeals

1. The undertaker must submit to the Secretary of State, a copy of the application submitted to the MMO and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”).

2. The undertaker must on the same day provide copies of the appeal documentation to the MMO and any relevant consultee.

3. As soon as is practicable after receiving the appeal documentation, but in any event within 20 business days of receiving the appeal documentation, the Secretary of State must appoint a person and forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent.

4. The MMO and any relevant consultee must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph 3 and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person.

5. The appeal parties must make any counter-submissions to the appointed person within 20 business days of receipt of written representations pursuant to paragraph 4 above.

6. The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable. If the appointed person considers that further information is necessary to enable him to consider the appeal he must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

7. Any further information required pursuant to paragraph 6 must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 20 business days of that date.

8. On an appeal the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the MMO (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

9. The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under this paragraph.

10. The appointed person may proceed to a decision even though no written representations have been made within those time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

11. The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

12. If an approval is given by the appointed person pursuant to this Part, it is deemed to be an approval for the purpose of Part 4 of this Schedule as if it had been given by the MMO. The MMO may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) may not be taken to affect or invalidate the effect of the appointed person's determination.

13. Save where a direction is given pursuant to paragraph 14 requiring the costs of the appointed person to be paid by the MMO, the reasonable costs of the appointed person must be met by the undertaker.

14. On application by the MMO or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance on the award of costs or any guidance which may from time to time replace it.

PART 6

Arbitration

Any dispute under any provision of this licence, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at **Schedule 9** of the Order, by a single arbitrator to be agreed upon by the parties within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Centre for Effective Dispute Resolution.

SCHEDULE 13

Article 35

Documents to be Certified

PART 1

Documents forming the environmental statement to be certified

<i>Application Document No.</i>	<i>Document Description</i>	<i>Version</i>	<i>Date</i>
6	Environmental Statement (Volumes 1, 2, 3, 4 and 5)	N/A	June 2018
D3_29	Onshore Historic Environment Addendum (PINs Ref REP3-029)	N/A	March 2019
D5_39	Navigation Risk Assessment Addendum (PINS Ref REP5-039)	B	April 2019
D4B_10	An addendum to the Environmental Statement (ES) assessing the SEZ proposal (PINS Ref REP4B-010)	N/A	April 2019
D4B_11	Implications of the	N/A	April 2019

D4B_12	SEZ – Seascape, Landscape and Visual Effects (PINS Ref REP4B-011) Implications of the SEZ – Seascape, Landscape and Visual Effects –Wirelines (PINS Ref REP4B-012)	N/A	April 2019
D4B_13	Structure Exclusion Zone, Onshore Heritage (PINS Ref REP4B-013)	N/A	April 2019
D4B_14	Assessment of the implications of the implementation of the Structures Exclusion Zone in relation to commercial fisheries (PINS Ref REP4B-014)	N/A	April 2019
D2_36	Review of the Environment Statement following the removal of the Option 2 landfall design (PINS Ref REP2-036)	N/A	February 2019

PART 2

Other documents to be certified

<i>Application Document No.</i>	<i>Document Description</i>	<i>Version</i>	<i>Date</i>
2.2	Land Plans (Offshore)	B	January 2019
2.3	Land Plans (Onshore)	D	February 2019
2.4	Special Category Land Plan	C	January 2019
2.5	Works Plan (Offshore)	D	June 2019
2.6	Works Plan (Onshore)	B	January 2019
2.7	Access Plan	N/A	June 2018
2.8	Temporary Stopping Up of Public Rights of Way Plan	N/A	June 2018
4.3	Book of Reference	C	February 2019
8.1	Code of Construction Practice	N/A	June 2018
8.3	Schedule of Mitigation	D	May 2019
8.4	Outline Access Management Strategy	N/A	June 2018

8.6	Offshore Archaeological Written Scheme of Investigation	C	March 2019
8.7	Outline Landscape and Ecological Management Plan	B	January 2019
8.8	Fisheries Liaison and Coexistence Plan	B	March 2019
8.10	Outline Offshore Operations and Maintenance Plan	B	March 2019
8.11	Draft Marine Mammal Mitigation Protocol	N/A	June 2018
8.13	Saltmarsh Mitigation, Reinstatement and Monitoring Plan	C	March 2019
8.15	Biogenic Reef Mitigation Plan	C	March 2019
8.16	Design and Access Statement	B	April 2019
D3_38	In-principle Offshore Ornithology Monitoring Plan	N/A	March 2019
D3_48	Schedule of Monitoring	B	April 2019
D4_6	Onshore Archaeology - Written Scheme Of Investigation	D	April 2019
D4_18	Outline Site Integrity Plan	B	March 2019
N/A	Shipping and Navigation Liaison Plan	A	June 2019

SCHEDULE 14

Appeals Procedure

To request an appeal

1. The undertaker must submit to the Secretary of State, a copy of the application which was submitted to the Secretary of State for determination and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”).

2. The undertaker must on the same day provide copies of the appeal documentation to any relevant consultee.

3. As soon as is practicable after receiving the appeal documentation, but in any event within 5 business days of receiving the appeal documentation, the Secretary of State must forward the appeal documentation to the Law Society and the Law Society must appoint an independent person to reside over the appeal and forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent.

4. The discharging authority and any relevant consultee must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph 3 and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person.

5. The appeal parties must make any counter-submissions to the appointed person within 20 business days of receipt of written representations pursuant to paragraph 4 above.

6. The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable. If the appointed person considers that further information is necessary to enable him to consider the appeal he must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

7. Any further information required pursuant to paragraph 6 must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 20 business days of that date.

8. On an appeal the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

9. The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under this paragraph.

10. The appointed person may proceed to a decision even though no written representations have been made within those time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

11. The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

12. If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) may not be taken to affect or invalidate the effect of the appointed person's determination.

13. Save where a direction is given pursuant to paragraph 14 requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

14. On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance on the award of costs or any guidance which may from time to time replace it.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Vattenfall Wind Power Ltd to construct, operate and maintain a generating station located approximately 8km from the coast of Thanet, Kent, together with all necessary and associated development. For the purposes of the development that it authorises Vattenfall Wind Power Ltd is authorised by the Order compulsorily or by agreement to purchase land and rights in land to use land, as well as to override easements and other rights. The Order also provides a defence in proceedings in respect of statutory nuisance and to discharge water. The Order imposes requirements in connection with the development for which it grants development consent.

The Order also grants deemed marine licences for the marine licensable activities, being the deposit of substances and articles and the carrying out of works, involved in the construction of the generating station and associated development. The deemed marine licences impose conditions in connection with the deposits and works for which they grant consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with **article 35** (certification of plans, etc.) of this Order may be inspected free of charge at the offices of Thanet District Council at Cecil Street, Margate, CX9 1XZ.