



N O R T H F A L L S

Offshore Wind Farm

DRAFT DEVELOPMENT CONSENT ORDER

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202[] No. 0000

INFRASTRUCTURE PLANNING

The North Falls Offshore Wind Farm Order 202[]

Made - - - -

Coming into force - -

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008 (“the 2008 Act”)(a), and in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009(b) for an order granting development consent.

The application was examined by the Examining Authority, appointed by the Secretary of State pursuant to section 61(c) and section 65(d) of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of that Act and with the Infrastructure Planning (Examination) Procedure Rules 2010(e). The Examining Authority has submitted a report to the Secretary of State under section 74(2)(f) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(g) and, as a national policy statement has effect in relation to the proposed development, has had regard to the documents and matters referred to in section 104(2)(h) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an Order granting development consent for the development described in the application on terms that in the opinion of the Secretary of State are not material different from those proposed in the application.

The Secretary of State is satisfied that open space within the Order land, when burdened with any 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(2)(i) of the 2008 Act applies.

The Secretary of State, having decided the application, has determined to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

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- (a) 2008 c. 29. Section 37 was amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c. 20).
(b) S.I. 2009/2264.
(c) Section 61 was amended by section 128(2) and Schedule 13, paragraph 18 to the Localism Act 2011 (c. 20) and by section 26 of the Infrastructure Act 2015 (c. 7).
(d) Section 65 was amended by Schedule 13 paragraph 22(2) and Schedule 25, paragraph 1 to the Localism Act 2011 (c. 20) and by section 27(1) of the Infrastructure Act 2015 (c. 7).
(e) S.I. 2010/103, amended by S.I. 2012/635.
(f) Section 74 was amended by sections 128(2) and 237 and by Schedule 13, paragraph 29 and Schedule 25, paragraph 1, to the Localism Act 2011 (c. 20).
(g) S.I. 2017/572.
(h) Section 104 was amended by section 58(5) of the Marine and Coastal Access Act 2009 (c. 23) and by section 128(2) of the and Schedule 13, paragraphs 1 and 49(1) to (6) of the Localism Act 2011 (c. 20).
(i) Section 132 was amended by section 24(3) of the Growth and Infrastructure Act 2013 (c. 27).

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120, 122, 123, 140 and 149A of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the North Falls Offshore Wind Farm Order 202[] and comes into force on [] 202[].

Interpretation

2.—(1) 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 2000 Act” means the Countryside and Rights of Way Act 2000(**h**);
- “the 2003 Act” means the Communications Act 2003(**i**);
- “the 2004 Act” means the Energy Act 2004(**j**);
- “the 2008 Act” means the Planning Act 2008(**k**);
- “the 2009 Act” means the Marine and Coastal Access Act 2009(**l**);
- “the 2016 Regulations” means the Environmental Permitting (England and Wales) Regulations 2016(**m**);
- “access to works plan” means the plan or plans certified as the access to works plan or plans by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);
- “address” includes any number or address used for the purposes of electronic transmission;
- “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;
- “apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

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- (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.
 - (h) 2000 c. 37.
 - (i) 2003 c. 21.
 - (j) 2004 c. 20.
 - (k) 2008 c. 29.
 - (l) 2009 c. 23.
 - (m) S.I. 2016/1154.

“archaeological mitigation strategy” means the document certified as the archaeological mitigation strategy by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

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

“the book of reference” means the document certified by the Secretary of State as the book of reference for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“build option 1” means the scenario in which the undertaker only constructs those works required for the North Falls Offshore Wind Farm grid connection and does not construct Work Nos. 6B or 12B;

“build option 2” means build option 2A or build option 2B”;

“build option 2A” means the scenario in which the authorised development will deliver works to support grid connection co-ordination, including the laying of onshore cable ducts (Work Nos. 6B and/or 12B), for transfer to and/or use by another generating station or transmission licence holder under the 1989 Act, as part of co-ordination for grid connection works for offshore generation;

“build option 2B” means the scenario in which the undertaker pulls cables through onshore cable ducts constructed by another generating station or transmission licence holder under the 1989 Act, as part of co-ordination for grid connection works for offshore generation;

“build option 3” means the scenario in which the undertaker constructs only Work No.1 and Work No. 2;

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

“cable circuit” means a number of electrical conductors necessary to transmit electricity between two points, comprising one or more conductors which may be bundled as one cable or take the form of separate cables, and in either case the circuit may include one or more auxiliary cables for the purpose of control, monitoring, protection or general communications;

“cable crossings” means the crossing of existing cables, pipelines or other existing infrastructure by the cables authorised by this Order together with cable protection;

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

“cable protection” means physical measures for the protection of cables including but not limited to concrete mattresses, split pipe system, and/or rock placement (including material used for cable crossings);

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

“commence” means—

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

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

“commissioning” means the process of assuring that all systems and components of the authorised development are tested to verify that they function and are operable in accordance with the specifications and operational requirements of the undertaker;

“deemed marine licences” means the marine licences set out in Schedules 8 (deemed marine licence under the 2009 Act – generation assets), 9 (deemed marine licence under the 2009 Act

– transmission assets), and 10 (deemed marine licence under the 2009 Act – transmission assets – offshore converter station);

“discharging authority” for the purposes of Part 3 (requirements) and Part 4 (procedure for discharge of requirements) of Schedule 1 means Essex County Council;

“environmental statement” means the documents listed in Part 1 and Part 2 of Schedule 12 (documents forming the environmental statement) and certified as the environmental statement by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“Five Estuaries” means the nationally significant infrastructure project known as Five Estuaries Offshore Wind Farm, being an offshore electricity generating station approximately ~~37km~~37 kilometres (km) from the coast of Suffolk, and being the authorised development consented by the Five Estuaries Offshore Wind Farm Order 202[];

“foundation” means any of— monopile, mono suction bucket, ~~gravity base system~~, multi-leg pin pile jacket, or multi-leg suction bucket ~~jacket or multi-leg gravity base system~~ jacket;

~~“gravity base system” means a structure principally of steel, concrete, or steel and concrete with a base which tapers as it rises which rests on the seabed due to its own weight with or without added ballast or additional skirts and associated equipment including J-tubes, corrosion protection systems and access platform(s) and equipment;~~

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

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

“HVAC” means high voltage alternating current;

“HVDC” means high voltage direct current;

“inter-array cable” means the network of offshore subsea cables connecting the wind turbine generators in Work No. 1 with each other and with the offshore substation platform(s) and/or offshore converter platform forming part of Work No. 2;

“jacket foundation” means a lattice type structure constructed of steel and additional equipment such as, J-tubes, corrosion protection systems and access platforms attached to the seabed;

“joint bay” means an excavation located at regular intervals along the cable route consisting of a concrete flat base slab constructed beneath the ground to facilitate the jointing together of the cables;

“land plans” means the plan or plans certified as the land plan or land plans by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“Outline LBBG compensation ~~document~~implementation and monitoring plan” or “Outline LBBG CIMP” means the document certified as the Outline LBBG compensation ~~document~~implementation and monitoring plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“link box” means the underground metal box placed within a plastic or concrete pit where the metal sheaths between adjacent export cable sections are connected and earthed and installed within a ground level manhole or inspection chamber to allow access to the link box for regular maintenance or fault-finding purposes;

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace any component of any offshore work including any cable, and the onshore works described in Part 1 of Schedule 1 (authorised development), to the extent assessed in the environmental statement and any derivative of maintain must be construed accordingly;

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- (a) “highway” is defined in section 328(1), “highway authority” is described in section 1. Section 1 was amended by sections 8 and 102 and Schedules 4, paragraph 1 and Schedule 17 to the Local Government Act 1985 (c. 51), by section 21 of the 1991 Act and by section 1(6) and Schedule 1, paragraphs 1 to 4 of the Infrastructure Act 2015 (c. 7). There are other amendments which are not relevant to this Order.

“Marine Management Organisation” or “MMO” means the Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH who is the body created under the 2009 Act and who is responsible for the monitoring and enforcement of the deemed marine licences;

“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 lowest level which spring tides reach on average over a period of time;

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

“monopile suction bucket foundation” means a steel cylindrical structure which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential, and may include additional equipment such as J-tubes, corrosion protection systems and access platforms;

“offshore converter platform” means a structure above MHWS and attached to the seabed by means of a foundation, with equipment to convert three-phase HVAC power generated by the wind turbine generators into HVDC power;

“offshore in-principle monitoring plan” means the plan or plans certified by the Secretary of State as the offshore in-principle monitoring plan for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“the offshore order limits and boundary co-ordinates plan” means the plan or plans certified by the Secretary of State as the offshore order limits and boundary co-ordinates plan for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“offshore platform” means the offshore substation platform(s) and/or the offshore converter platform;

“offshore substation platform” means a structure above MHWS and attached to the seabed by means of a foundation, with one or more decks, whether open or fully clad, accommodating electrical power transformers, switchgear, instrumentation, protection and control systems, 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;

“offshore works” means Work Nos. 1 to 4B and any related further associated development in connection with those works;

“onshore site preparation works” means operations consisting of site clearance including vegetation clearance, pre-planting of landscaping works, ecological mitigation works, archaeological investigations, intrusive and other environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, preparatory works to existing infrastructure and diversion and laying of services, erection of any temporary means of enclosure, site security works, creation of temporary hardstanding creation of temporary means of access and the temporary display of site notices or advertisements;

“onshore works” means Work Nos. 4B to 14 and any related further associated development in connection with those works;

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

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

“outline biodiversity net gain strategy” means the document certified as the outline biodiversity net gain strategy by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline construction traffic management plan” means the document certified as the outline construction traffic management plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline fisheries liaison and co-existence plan” means the document certified as the outline fisheries liaison and co-existence plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline horizontal directional drill method statement and contingency plan” means the document certified as the outline horizontal directional drill method statement and contingency plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline landscape and ecological management strategy” means the document certified as the outline landscape and ecological management strategy by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline marine mammal mitigation protocol” means the document certified as the outline marine mammal mitigation protocol by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline navigation and installation plan” means the plan or plans certified by the Secretary of State as the outline navigation and installation plan for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline offshore written scheme of investigation” means the document certified as the outline offshore written scheme of investigation by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline onshore written scheme of investigation” means the document certified as the outline onshore written scheme of investigation by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline operational drainage strategy” means the document certified as the outline operational drainage strategy by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline project environmental management plan” means the document certified as the outline project environmental management plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline public rights of way management plan” means the document certified as the outline public rights of way management plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline site integrity plan for the southern north sea special area of conservation” means the document certified as the outline site integrity plan for the southern north sea special area of conservation by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline skills and employment plan” means the document certified as the outline skills and employment plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline vessel traffic monitoring plan” means the document certified as the outline vessel traffic monitoring plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

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

“platform interconnector cable” means a cable circuit between the offshore platforms;

“public rights of way plan” means the plan or plans certified as the public rights of way plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“relevant planning authority” means Tendring District Council, or any successor to it as the planning authority for the land in question;

“requirements” means, or a reference to a numbered requirement is a reference to, those matters set out in Part 3 of Schedule 1 (requirements) to this Order;

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

“SNCB” means statutory nature conservation body, being the appropriate nature conservation body as defined in Regulation 5 of the Conservation of Habitats and Species Regulations 2017^(a) or its equivalent in the Conservation of Offshore Marine Habitats and Species Regulations 2017^(b);

“special category land” means the land shown on the special category land plan and described in the book of reference;

“special category land plan” means the plan certified as such by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“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^(c), together with land on the verge of a street or between two carriageways, and includes any footpath and any part of a street;

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

“streets plan” means the plan or plans certified as the streets plan or plans by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“suction bucket” means a steel cylindrical structure attached to the legs of a jacket foundation which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

“temporary traffic regulation order plan” means the plan or plans certified as the temporary traffic regulation order plan or plans by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“transition joint bay” means the underground concrete bays in Work No. 4D where the offshore export cable circuits are jointed to the onshore export cable circuits;

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

“tree preservation order and hedgerow plan” means the plan or plans certified as the tree preservation order and hedgerow plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

(a) S.I. 2017/1012.

(b) S.I. 2017/1013.

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

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

“trenchless installation techniques” means the installation of electrical cable circuits by means of boring techniques for installing cable ducts including horizontal directional drilling, pipe jacking/horizontal auger boring and micro-boring;

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

“undertaker” means, subject to article 5 (benefit of the Order), North Falls Offshore Wind Farm Limited (company number 12435947);

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

“vessel” means every description of vessel, however propelled or moved, and includes a ~~nondisplacement~~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 or transition piece;

“working day” means a day which is not a weekend, bank holiday or public holiday in England;

“works plans (offshore)” means the plan or plans certified as the works plans (offshore) by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.); and

“works plans (onshore)” means the plan or plans certified as the works plans (onshore) by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.).

(2) References in this Order to rights over land include references to rights to do or restrain or to place and maintain, anything in, on or under land or in the air-space above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject 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 the land which is acquired under this Order or which is an interest otherwise comprised in the Order land.

(3) All distances, directions, capacities, volumes and lengths referred to in this Order are approximate save in respect of the parameters referred to in—

- (a) requirements 2, 6, ~~7~~8 and 17 in Part 3 of Schedule 1 (requirements);
- (b) conditions 10 ~~to~~ and 11 in Part 2 of Schedule 8 (deemed marine licence under the 2009 Act – generation assets);
- (c) conditions 10 to 12 in Part 2 of Schedule 9 (deemed marine licence under the 2009 Act – transmission assets); and
- (d) conditions 10 ~~to~~ and 11 in Part 2 of Schedule 10 (deemed marine licence under the 2009 Act –transmission assets (offshore converter platform)).

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

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

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

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this 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) Work Nos. 1 to 4B must be constructed within the Order limits seaward of MHWS and Work Nos. 4C to 14 must be constructed within the Order limits landward of MHWS.

Power to maintain the authorised development

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

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

Benefit of the Order

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

(2) Subject to paragraph (5) 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 (3) below) and such related statutory rights as may be agreed between the undertaker and the transferee; and
- (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 (3) below) and such related statutory rights as may be so agreed.

except where paragraph (8) applies, in which case the consent of the Secretary of State is not required.

(3) Subject to paragraphs (5) and (6) the undertaker may with the written consent of the Secretary of State—

- (a) transfer to the transferee the whole of any of the deemed marine licences and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to the lessee for the duration of the period mentioned in paragraph (2)(b), the whole of any of the deemed marine licences and such related statutory rights as may be so agreed.

(4) Where an agreement has been made in accordance with paragraph (2) or (3), references in this Order to the undertaker, except in paragraphs (7) and (9), include references to the transferee or the lessee.

(5) 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.

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

(7) Where the undertaker has granted any benefit, or for the duration of any period during which the undertaker has granted any benefit, under paragraph (2) or (3)—

- (a) the benefit transferred or granted (“the transferred benefit”) includes any rights that are conferred, or 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 the transfer or grant or which occurs as a result of any activity carried out by the undertaker on behalf of the transferee; and
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraphs (2) or (3) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(8) The consent of the Secretary of State is required for the exercise of powers under paragraphs (2) or (3) except where—

- (a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply, etc) of the 1989 Act;
- (b) in relation to the transfer or lease of any or all of Work No. 9 or any other works within a highway, the transferee or lessee is a highway authority responsible for the relevant highway; or
- (c) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have lapsed 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 full and final settlement of any such claim,
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim, or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(9) Section 72(7) and (8) of the 2009 Act (variation, suspension, revocation and transfer) do not apply to a transfer or grant of the whole of the benefit of the provisions of the deemed marine licences to another person by the undertaker pursuant to an agreement under paragraph (3) save that the MMO may amend any deemed marine licence granted under Schedule 8, Schedule 9 or Schedule 10 of the Order to correct the name of the undertaker to the name of the transferee or lessee under this article 5 (benefit of the Order).

Application and modification of legislative provisions

6. The following provisions are modified to the extent specified, or do not apply, in relation to the construction or works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised development—

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

“or

 - (k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”.
- (b) the provisions of the Neighbourhood Planning Act 2017 insofar as they relate to the temporary possession of land under article 31 (temporary use of land for carrying out the authorised development) and article 32 (temporary use of land for maintaining the authorised development) of this Order.

- (c) regulation 12 (requirement for an environmental permit) of the 2016 Regulations in respect of a flood risk activity only;
- (d) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 of the Water Resources Act 1991 that require consent or approval for carrying out the works;
- (e) section 23 of the Land Drainage Act 1991 (prohibition of obstructions etc. in watercourses);
- (f) sections 6 (grass verges etc) and 30 (unauthorised structures on seashore) of the Essex County Council Act 1987^(a);
- (g) Holland Haven Country Park local nature reserve byelaws made by Tendring District Council on 5 July 1995 under sections 20, 21(4) and 106 of the National Parks and Access to the Countryside Act 1949^(b) in accordance with section 236 of the Local Government Act 1972^(c);
- (h) the provisions of any byelaws made under section 66 of the Land Drainage Act 1991 (power to make byelaws) that require consent or approval for the carrying out of works; and
- (i) sections 28E and 28H of the Wildlife and Countryside Act 1981.

Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraphs (d), (fb), (g) and (ga) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine is to be imposed, under section 82(1) 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, maintenance or decommissioning of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1947; or
 - (ii) is a consequence of the construction, maintenance or decommissioning of the authorised development 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 development and that the nuisance is attributable to the use of the authorised development which is being used in compliance with requirement 17 (control of noise during operational phase); or
 - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

^(a) 1987 c. xx.

^(b) 1949 c. 97. Section 20 was amended by Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c.16). There are other amendments which are not relevant to this Order. Sections 21 and 106 were amended by Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c.16) and Schedule 20 to the Local Government Act 1972 (c. 70). There are other amendments which are not relevant to this Order.

^(c) 1972 c. 20. Section 236 was amended by section 84 of the Local Government Act 1985 (c.51), Schedule 6 to the Local Democracy, Economic Development and Construction Act 2009 and section 55 of the Levelling-up and Regeneration Act 2023. There are other amendments which are not relevant to this Order.

PART 3

STREETS

Street works

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

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

(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.

Application of the 1991 Act

9.—(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 issues 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 closure, temporary alteration or temporary diversion of a street by the undertaker under article 11 (temporary closure of public rights of way) and article 12 (temporary restriction of use of streets),

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

(2) The provisions of the 1991 Act^(a) 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 a street authority);
- (e) section 69 (works likely to affect other apparatus in the street);
- (f) section 76 (liability for cost of temporary traffic regulations);
- (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 sub-paragraphs (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 closure, alteration or diversion (as the case may be) required in a case of emergency.

Construction and maintenance of new or altered highway

10.—(1) Any highway to be constructed under this Order must be completed to the reasonable satisfaction of the relevant highway authority and, unless otherwise agreed in writing with the

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

highway authority, the highway including any culverts or other structures laid under it must be maintained by and at the expense of the relevant highway authority from its completion.

(2) Where a highway is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the relevant highway authority and, unless otherwise agreed in writing with the relevant highway authority, that part of the highway including any culverts or other structures laid under it must be maintained by and at the expense of the relevant highway authority from its completion.

Temporary closure of public rights of way

11.—(1) The undertaker may, in connection with the carrying out of the authorised development, temporarily close each of the public rights of way specified in column (1) of Part 2 (public rights of way to be temporarily closed or restricted) of Schedule 3 (traffic regulation) to the extent specified in column (2), by reference to the letters shown on the temporary closure of public rights of way plan.

(2) The public rights of way specified in Part 2 (public rights of way to be temporarily closed or restricted) of Schedule 3 may not be temporarily closed under this article unless a diversion for the closed section of that public right of way, is first provided by the undertaker to the standard defined in the public access management plan forming part of the code of construction practice to be approved in accordance with the requirements set out in Part 3 (requirements) of Schedule 1, to the reasonable satisfaction of the highway authority.

(3) The relevant diversion route provided under paragraph (2) will be subsequently maintained by the undertaker until the re-opening of the relevant right of way specified in paragraph (1).

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

Temporary restriction of use of streets

12.—(1) The undertaker, during and for the purposes of constructing or maintaining the authorised development, may temporarily close, alter or divert any street and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street;
- (b) authorise the use of motor vehicles on classes of highway where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and
- (c) subject to paragraph (3), prevent all persons from passing along the street.

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

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

(4) The undertaker must not temporarily close or use as a temporary working site any street without the consent of the street authority, which may attach reasonable conditions to the 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 (determination of questions of disputed compensation) 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 (5), that street authority is deemed to have granted consent.

Access to works

13.—(1) The undertaker may, for the purposes of the authorised development—

- (a) form, lay out and maintain a means of access, or improve or maintain an 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 relevant planning authority after consultation with the highway authority in accordance with requirement 10 (permanent 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 development.

(2) If the relevant planning authority fails to notify the undertaker of its decision within 56 days of receiving an application for approval under paragraph (1)(b) that relevant planning authority is deemed to have been granted.

Traffic regulation

14.—(1) Subject to the provisions of this article, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with, or in consequence of, the construction of the authorised development, temporarily—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (b) make provision as to the direction or priority of vehicular traffic on any road;
- (c) permit, prohibit or restrict the use of any road;
- (d) permit, prohibit or restrict vehicular access to any road;
- (e) place traffic signs and signals in the extents of the road specified in column (2) of Part 1 (streets to be temporarily closed or restricted), column (2) of Part 2 (public rights of way to be temporarily close or restricted) and column (3) of Part 3 (speed limits) of Schedule 3 (traffic regulation), and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016^(a).

(2) The undertaker must notify the chief officer of police and the traffic authority in whose area the road is situated of the intended date of commencement of development under this Order and the intended date of commencement of any maintenance works where the exception set out in paragraph (1) will apply not less than 14 days before such work are commenced.

(3) On and after the date notified by the undertaker in accordance with paragraph (4) no person is to drive any motor vehicle at a speed exceeding the limit specified in column (3) of Part 3 (speed limits) of Schedule 3 along the lengths of road identified in the corresponding row of column (2) of that Part. No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011^(b) when in accordance with regulation 3(5) of those regulations.

(4) The undertaker must notify the chief officer of police and the traffic authority in whose area the road is situated of the date upon which paragraph (3) takes effect not less than 14 days before that date.

(5) Before exercising the power conferred by paragraph (1) the undertaker must—

- (a) consult with the chief officer of police in whose area the road is situated; and
- (b) obtain the written consent of the traffic authority in whose area the road concerned is situated.

(6) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development revoke, amend or suspend in whole or in part any order not listed in Schedule 4 (access to works) made, or having effect as if made, under the

^(a) S.I. 2016/362.

^(b) S.I. 2011/935.

1984 Act, either at all times or at times, on days or during such periods as may be specified by the undertaker.

(7) The power conferred by paragraph (6) may be exercised at any time prior to the expiry of 12 months from the commencement of operation of the authorised development but subject to paragraph (10) any prohibition, restriction or other provision made under this article may have effect both before and after the expiry of that period.

(8) Before exercising the powers conferred by paragraph (1) the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

(9) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (8).

(10) Unless otherwise stated, the undertaker must not exercise the powers conferred by this article unless it has—

- (a) given to the chief officer of police and to the traffic authority in whose area the road is situated not less than—
 - (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily, and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(11) Any prohibition, restriction or other provision made by the undertaker under this article—

- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act, and the instrument by which it is effected may specify specific savings and exemptions to which the prohibition, restriction or other provision is subject; and
- (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(a).

(12) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by this article within a period of 24 months from the opening of the authorised development.

(13) In this article, expressions used in this article and in the 1984 Act have the same meaning.

(14) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

(15) Save for any application made to National Highways, if the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under this article, the traffic authority is deemed to have granted consent.

Agreements with street authorities

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

(a) 2004 c. 18. There are amendments to this Act not relevant to this Order.

- (a) any temporary closure, alteration or diversion of a street authorised by this Order; or
 - (b) the carrying out in the street of any works referred to in article 8 (street works).
- (2) Such 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.

Power to alter layout etc. of streets

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

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

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

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

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

17.—(1) Subject to paragraphs (3) and (4) below, 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 development and for that purpose may inspect, lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

(3) The undertaker must not discharge any water into any watercourse or any 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 paragraph (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

(a) 1991 c. 56. Section 106 was amended by sections 35(8)(a) and 43(2) of and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c. 43) and sections 36(2) and 99(2), (4), (5)(a), (5)(b), (5)(c) of the Water Act 2003 (c. 37) and section 32, and paragraph 16(1) of and Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(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 beds or banks of any watercourse forming part of a main river as defined under section 113(1) of the Water Resources Act 1991, 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) This article does not authorise any water discharge or groundwater activity for which an environmental permit is required by regulation 12 (requirement for an environmental permit) of the 2016 Regulations.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which either belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the 2016 Regulations have the same meaning as in those Regulations.

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

Protective works to buildings

18.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out of any part of the authorised development in the vicinity of the building; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the day on which that part of the authorised development is commissioned.

(3) For the purposes of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purposes of carrying out protective works under this article to a building, the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land that is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works to a building;
- (b) a power under paragraph (3) to enter a building and land within its curtilage;
- (c) a power under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a power under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days’ notice of its intention to exercise the power and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of the powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is commissioned it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim nuisance).

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) 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 that 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.

(12) In this article, “protective works”, in relation to a building, means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage that has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land onshore

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

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

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

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

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

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

- (a) in land location 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 or delayed.

(5) 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.

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

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

that authority is deemed to have granted consent.

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

Removal of human remains

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

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

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

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within fifty-six days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the specific land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium;

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

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

(8) If—

- (a) within the period of fifty-six days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land;
- (b) such notice is given and no application is made under paragraph (6) within fifty-six days after the giving of the notice but the person who has given the notice fails to remove the remains within a further period of fifty-six days;
- (c) within fifty-six days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice under paragraph (4) relates cannot be identified;

subject to paragraph (9), the undertaker must remove the remains and cause them to be re-interred in such burial ground, or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

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

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

(11) No notice is required under sub-paragraph (2) before the removal of any human remains where the undertaker is satisfied that—

- (a) the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being moved in accordance with this article.

(12) In this article, references to a relative of the deceased are to a person who—

- (a) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased;
- (b) is, or is a child of, a brother, sister, uncle or aunt of the deceased;
- (c) is the lawful executor of the estate of the deceased; or
- (d) is the lawful administrator of the estate of the deceased.

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

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

(15) Section 25 (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) of the Burial Act 1857^(a) is not to apply to a removal carried out in accordance with this article.

(a) 1857 c. 81.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

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

(2) This article is subject to article 23 (time limit for exercise of authority to acquire land compulsorily), article 24(2) (compulsory acquisition of rights etc.), article 28 (acquisition of subsoil only), article 30 (rights under or over streets), article 31 (temporary use of land for carrying out the authorised development), article 46 (Crown rights) and Schedule 14 (protective provisions).

Compulsory acquisition of land: minerals

22. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 are incorporated in this Order, subject to the following modifications—

- (a) for “acquiring authority” substitute “undertaker”; and
- (b) for “undertaking” substitute “authorised development”.

Time limit for exercise of authority to acquire land compulsorily

23.—(1) The applicable period for the purposes of section 4 of the 1965 Act (time limit for giving notice to treat) and section 5A of the 1981 Act (time limit for general vesting declaration) is seven years beginning on the day on which this Order is made.

(2) No notice to treat is to be served under Part 1 (compulsory purchase under the Acquisition of Land Act of 1946) of the 1965 Act and no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the 1981 Act) after the end of the applicable period, including any extension to the applicable period pursuant to those Acts.

(3) The authority conferred by article 31 (temporary use of land for carrying out the authorised development) must not be used after the end of the applicable period referred to in paragraph (1), save that if an application is made under section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent) the applicable period is to be extended by—

- (a) a period equivalent to the period beginning on the day the application is made and ending on the day it is withdrawn or finally determined; or
- (b) if shorter, one year.

(4) An application is not finally determined for the purposes of paragraph (3)(a) if an appeal in respect of the application—

- (a) could be brought (ignoring any possibility of an appeal out of time with permission); or
- (b) has been made and not withdrawn or finally determined.

(5) Nothing in paragraph (3) 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 etc.

24.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants affecting the Order land as may be required for any purpose for which that land may be acquired under article 21 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 25 (private rights) and article 33 (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 existing rights over land and the creation and acquisition of the 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 (other provisions as to divided land) of the 1965 Act, and Schedule 2A (counter-notice requiring purchase of land not in notice to treat) as substituted by paragraph 5(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker creates a new interest or acquires an existing right over land or imposes a restrictive covenant under paragraph (1) or (2), 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 creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights and impose such restrictions to the statutory undertaker in question.

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

(7) Subject to the modifications set out in Schedule 6 the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction as they apply to the compulsory purchase of land and interests in land.

(8) Subject to article 46 (Crown rights), so much of the special category land as is required for the purposes of exercising the powers acquired by the undertaker pursuant to this article is discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of those rights.

Private rights

25.—(1) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily, by agreement or through the grant of a 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),

whichever is earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition of rights or the imposition of restrictions under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restriction—

- (a) as from the date of the acquisition of the right or the imposition of the restriction by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of a 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 (powers of entry) in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictions 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) Subject to the provisions of this article, all private rights over any part of the Order land that is owned by, vested in or acquired by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights and where the undertaker gives notice of such extinguishment.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction 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 (determination of questions of disputed compensation).

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of right, and removal of apparatus, of statutory undertakers etc.) or article 33 (statutory undertakers) applies.

(7) 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 restrictions 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 or restriction specified in the notice; or

(b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction is question is vested, belongs to benefits.

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

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

(9) 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 1981 Act

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

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

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

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

(4) In Section 5(2) (earliest date for execution of declaration) omit the words from “and this subsection” to the end.

(5) In Section 5B(1) (extension of time limit during challenge) 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)”.

(6) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

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

(8) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 28(1) (acquisition of subsoil only) of the North Falls Offshore Wind Farm Order 202[], which excludes the acquisition of subsoil only from this Schedule.”.

(9) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 29 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order.

Statutory authority to override easements and other rights

27.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by the Order is authorised for the purpose specified in section 158(2) (nuisance: statutory authority) of the 2008 Act, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the use of land arising by virtue of contract,

authorised by virtue of this Order and the operation of section 158 (nuisance: statutory authority) of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and any restrictions as to the use of land arising by virtue of a contract.

(4) Subsection (2) of section 10 (further provisions as to compensation for injurious affection) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to construction of paragraph (2) (with any necessary modifications).

Acquisition of subsoil only

28.—(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 21 (compulsory acquisition of land) or article 24 (compulsory acquisition of rights etc.) 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.

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act as modified by Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights);
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

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

Modification of Part 1 of the 1965 Act

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

(2) In Section 4A(1) (extension of time limit during challenge), 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)”.

(3) In Section 11A (powers of entry: further notices of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”; and
- (b) in subsection (2), after “land” insert “under that provision”.

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

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 28(3) (acquisition of subsoil only) of the North Falls Offshore Wind Farm Order 202[], which excludes the acquisition of subsoil only from this Schedule.”; and

(b) at the end insert—

“PART 4

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 18 (protective works to buildings), article 19 (authority to survey and investigate the land onshore), article 31 (temporary use of land for carrying out the authorised development) or article 32 (temporary use of land for maintaining the authorised development) of the North Falls Offshore Wind Farm Order 202[].”.

Rights under or over streets

30.—(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 development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

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

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

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

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

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act 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 development

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

- (a) enter on or 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 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from the land;
- (c) construct temporary works (including the provision of means of access and footpaths), haul roads, security fencing, bridges, services, signage, 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 development;
- (e) construct any works, or use the land, as specified in relation to that land in column (3) of Schedule 7 (land of which temporary possession may be taken), or any mitigation works;
- (f) construct such works on that land as are mentioned in Part 1 of Schedule 1 (authorised development); and
- (g) carry out mitigation works required pursuant to the requirements in Part 3 of Schedule 1 (requirements).

(2) 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.

(3) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 7; or
- (b) in the case of land specified in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the part of the authorised development for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Unless the undertaker has served a 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 or otherwise agreed with the owners of the land, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace any building, structure, drain or electric line removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 2 (streets and public rights of way subject to street works) or any new footpath surface or other enhancements carried out under this article to any footpath or any improvements carried out under this article to any bridge;
- (d) remove any fencing or boundary treatments installed by the undertaker under this article to replace or enhance existing fencing or boundary treatments; or
- (e) restore the land on which any works have been carried out under paragraph (1)(g) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements of Schedule 1.

(5) 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.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

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

- (a) acquiring new rights or imposing restrictive covenants over any part of the land listed under article 24 (compulsory acquisition of rights etc.) to the extent that such land is listed in column (1) of Schedule 5 (land in which only new rights etc., may be acquired); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 28 (acquisition of subsoil only).

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

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

(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 7.

(12) Subject to article 46 (Crown rights), so much of the special category land as is required for the purposes of exercising the powers pursuant to this article is temporarily discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconstant with the exercise of those powers, and only for such time as any special category land is being used under this article.

Temporary use of land for maintaining the authorised development

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

- (a) enter on or take temporary possession of any of the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any of the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) 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
- (b) any building (other than a house) if it is for the time being occupied.

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

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

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

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

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

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

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

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

(11) In this article "the maintenance period", means the period during which the authorised development is in operation after construction and commissioning is complete.

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

Statutory undertakers

33. Subject to the provisions of Schedule 14 (protective provisions) the undertaker may—

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

Recovery of costs of new connections

34.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (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 supply is given.

(2) Paragraph (1) does not apply in the case of removal of a public sewer but where such a sewer is removed under article 33 (statutory undertakers), any person who is—

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

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or

sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

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

(4) In this paragraph—

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

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

PART 6

OPERATIONS

Operation of a generating station

35.—(1) The undertaker is authorised to use and operate the authorised development for which development consent is granted by this Order.

(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 the authorised development.

Deemed marine licences under the 2009 Act

36. The deemed marine licences set out in Schedule 8 (deemed marine licence under the 2009 Act – generation assets), Schedule 9 (deemed marine licence under the 2009 Act – transmission assets) and Schedule 10 (deemed marine licence under the 2009 Act – transmission assets – offshore converter station) respectively, are deemed to be granted to the undertaker under Part 4 (marine licences) of the 2009 Act for the licenced marine activities set out in Part 1, and subject to the conditions set out in Part 2, of each of those Schedules.

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

37.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development 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 development, 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 prejudices 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 and 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 least of any obligation of any other party under the lease.

Operational land for the purposes of the 1990 Act

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

Felling or lopping of trees and removal of hedgerows

39.—(1) Subject to paragraph (3) and article 40 (trees subject to tree preservation orders), the undertaker may fell or lop or cut back the roots of any tree or shrub within or encroaching upon land within the Order limits, if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons within the authorised development.

(2) Without limitation to the scope of paragraph (1) the undertaker may, for the purpose of the authorised project—

- (a) remove the hedgerows specified in Schedule 11, Part 1 (removal of hedgerows) to the extent and for the purpose specified; and
- (b) remove the important hedgerows specified in Schedule 11, Part 2 (removal of important hedgerows) to the extent and for the purpose specified.

(3) In carrying out any activity authorised by paragraph (1) or (2), the undertaker must—

- (a) do no unnecessary damage to any tree or shrub; and
- (b) pay compensation to any person for any loss or damage arising from such activity.

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

(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

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

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

- (a) the undertaker must do 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) (replacement of trees) of the 1990 Act does not apply.

(a) S.I. 1997/1160.

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

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

Certification of plans and documents, etc.

41.—(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 12 (documents to be certified) for certification that they are true copies of the documents referred to in this Order.

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

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

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies that provision by 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 this Order as made;

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

Arbitration

42.—(1) Subject to article 45 (saving provisions for Trinity House), any difference 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 13 (arbitration rules) 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 Secretary of State.

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

Requirements, appeals, etc.

43.—(1) Part 4 of Schedule 1 (procedure for discharge of requirements) has effect.

(2) Save to the extent that the requirements are already subject to Part 4 of Schedule 1 (procedure for discharge of requirements), sub-section (1) of section 78 (right to appeal against planning decisions and failure to take such decision) of the 1990 Act applies to the development consent granted by this Order and to the requirements except that it is modified so as to read for the purposes of this Order only as follows—

- (a) after “local planning authority” insert “or Secretary of State”;
- (b) after sub-section (b) insert the following—

“(ba) refuse or fails to determine an application for any consent, agreement or approval of that authority required by a requirement imposed on a grant of development consent or contained in a development consent order, or grant it subject to conditions; or”; and

- (c) after sub-section (1), insert the following—

“(1A) Where the appeal under sub-section (1) relates to a decision by the Secretary of State, the appeal will be decided by a Secretary of State who would not be responsible for determining an application for development consent with the subject matter of the North Falls Offshore Wind Farm Order 202[] section 103(1) of the 2008 Act applied.”.

(3) Sections 78 (right to appeal against planning decisions and failure to take such decisions) and 79 (determination of appeals) of the 1990 Act have effect in relation to any appeal under the terms of this article except that the Secretary of State in question is the Secretary of State who would be responsible for determining an application for development consent with the subject matter of this Order if section 103(1) (Secretary of State is to decide applications) of the 2008 Act applied.

Abatement of works abandoned or decayed

44. Where any of the offshore works or all of them or any part of them, 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 either to repair, make safe and restore one or any of those Works, or any relevant part of them, or to remove them or any relevant part and, without prejudice to any notice served under section 105(1) of the 2004 Act restore the site to a safe and proper condition, to such an extent and within such limits as may be specified in the notice.

Saving provisions for Trinity House

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

Crown rights

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

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

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

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

Protective provisions

47. Schedule 14 (protective provisions) has effect.

Funding

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

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or

- (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 21 (compulsory acquisition of land);
- (b) article 24 (compulsory acquisition of rights etc.);
- (c) article 25 (private rights);
- (d) article 28 (acquisition of subsoil only);
- (e) article 30 (rights under or over streets);
- (f) article 31 (temporary use of land for carrying out the authorised development);
- (g) article 32 (temporary use of land for maintaining the authorised development); and
- (h) article 33 (statutory undertakers).

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

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

No double recovery

49. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or rule of law, or under two or more different provisions of this order.

Service of notices

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978 (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and

- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer will to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice of document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Compensation provisions

51. Schedule 15 (compensation to protect the coherence of the national site network) has effect.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

PART 1

AUTHORISED DEVELOPMENT

A nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 15 (generating stations) of the 2008 Act which is located in the Southern North Sea approximately 40 kilometres from the East Anglian coast at its nearest point, comprising—

Work No. 1—

- (a) an offshore wind turbine generating station with a gross electrical output capacity of over 100 megawatts comprising up to 57 wind turbine generators each fixed to the seabed by one of the following foundation types: monopile, mono suction bucket, ~~gravity base system~~, multi-leg pin pile jacket, or multi-leg suction bucket ~~jacket or multi-leg gravity base system~~ jacket;
- (b) a network of cables between the wind turbine generators and between the wind turbine generators and Work No. 2, including one or more cable crossings;

and associated development within the meaning of section 115(2) of the 2008 Act comprising—

Work No. 2—

- ~~(e)~~(a) up to two offshore substation platforms each fixed to the seabed by one of the following foundation types: monopile, ~~gravity base system~~, multi-leg pin pile jacket or a multi-leg suction bucket jacket and a platform interconnector cable including one or more cable crossings; and
- ~~(d)~~(b) up to one offshore converter platform fixed to the seabed by one of the following foundation types: monopile, ~~gravity base system~~, multi-leg pin pile jacket or a multi-leg suction bucket jacket.

*Work No. 3—*up to two cable circuits between Work No. 2 and Work No. 4A, including one or more cable crossings;

*Work No. 4A—*up to two cable circuits and associated ducting between Work No. 3 and Work No. 4B including up to three drilling exit pits for trenchless installation techniques, one or more cable crossings and a temporary work area for vessels to carry out anchoring and positioning.

Between MHWS and MLWS and in the County of Essex and District of Tendring

*Work No. 4B—*landfall connection works comprising up to two cable circuits and associated ducting between Work No. 4A and Work No. 4C, including trenchless installation technique works.

In the County of Essex and the District of Tendring

*Work No. 4C—*onshore connection works comprising up to two cable circuits and associated ducting between Work No. 4B and Work No. 4D.

*Work No. 4D—*onshore connection works comprising—

~~(e)~~(a) up to two cable circuits and associated ducting connecting Work No. 4C and Work No. 6;

~~(f)~~(b) up to three drilling entry pits for trenchless installation techniques;

~~(g)~~(c) up to two transition joint bays;

~~(h)~~(d) working areas and laydown areas and means of access.

Work No. 5—temporary compound including temporary working areas and laydown areas.

Work No. 6—onshore connection works comprising—

Work No. 6A—

~~(i)~~(a) up to two cable circuits and associated ducting between Work No. 4D and Work No. 12 including working areas and laydown areas and means of access; or

~~(j)~~(b) up to two cable circuits to be pulled through existing ducts between Work No. 4D and Work No. 12 including working areas and laydown areas and means of access; and

Work No. 6B—cable ducting for two additional cable circuits for later installation of additional electrical connections between Work No. 4D and Work No. 12 including working areas and laydown areas and means of access.

Work No. 7—temporary compounds including temporary working areas and laydown areas and means of access.

Work No. 8—temporary means of access including creation and improvement of accesses and visibility splays and vegetation clearance.

Work No. 9—works to permanently widen and improve the junction between Bentley Road and the A120 and to permanently widen and improve Bentley Road from A120 to Works No. 6, including temporary provision of area for non-motorised user access.

Work No. 10—permanent means of access including creation and improvement of accesses and visibility splays and vegetation clearance.

Work No. 11—an onshore substation including platform or foundations, electrical equipment including switch gear, power transformers, reactive compensation equipment, filters, cooling equipment, control and welfare buildings, lightning rods, internal roads, security fencing and other associated equipment, structures and buildings including noise-attenuation works and permanent security fencing and security gate.

Work No. 12—onshore substation compound including—

Work No. 12A—

~~(k)~~(a) up to two cable circuits and associated ducting between Work No. 6 and Work No. 14 including working areas and laydown areas and means of access;

~~(l)~~(b) up to two cable circuits to be pulled through existing ducts between Work No. 6 and Work No. 14 including working areas and laydown areas and means of access;

~~(m)~~(c) land re-profiling, groundworks and creation of platforms and foundations;

~~(n)~~(d) landscaping;

~~(o)~~(e) drainage works including connections to existing drainage and creation of new sustainable drainage including attenuation pond(s);

~~(p)~~(f) temporary and permanent means of access including creation and improvement of accesses and visibility splays and vegetation clearance;

~~(q)~~(g) temporary compounds including working areas and laydown areas;

~~(r)~~(h) temporary and permanent ecological and environmental mitigation works including habitat creation.

Work No. 12B—cable ducting for two additional cable circuits for later installation of additional electrical connections between Work No. 6 and Work No. 14.

Works No. 13—Groundworks, drainage works, outfall and planting including working areas and laydown areas and means of access.

Work No. 14—Electrical works to connect to a National Grid substation including—

- ~~(+)~~(a) worked need to connect the authorised development to the new National Grid substation including but not limited to cabling, cable sealing ends, circuit breakers, surge arrestors, dis-connectors, transformers, busbars and busbar clamp measuring equipment, relay marshalling rooms and electrical earthing works;
- ~~(+)~~(b) connection works comprising up to two buried 400kV cable circuits and associated ducting between Work No. 12 and the National Grid substation including electrical engineering works within and around the National Grid substation buildings and compound;
- ~~(+)~~(c) temporary and permanent means of access including creation and improvement of accesses and visibility splays and vegetation clearance;
- ~~(+)~~(d) temporary compounds including working areas and laydown areas.

In connection with Work Nos. 1, 2, 3 and 4A, and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

- (i) scour protection around the foundations of the offshore structures;
- (ii) cable protection measures such as rock placement and the placement of rock and/or concrete mattresses, with or without frond devices;
- (iii) dredging;
- (iv) the removal of material from the seabed required for the construction of Work Nos. 1, 2, 3 and 4A and the disposal of inert material of natural origin and/or dredged material within the Order limits produced during construction drilling, seabed preparation for the installation of the foundations of the offshore structures, during seabed preparation for cable laying and excavation of drilling pits for trenchless installation techniques;
- (v) creation and use of temporary vessel laydown areas, use of cable anchors and buoys;
- (vi) removal of static fishing equipment; and
- (vii) lighting,

and in connection with such Work Nos. 4B, 4C, 4D, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

- ~~(viii)~~(i) haul roads, ramps, watercourse and other temporary crossings, means of access and other vehicular and/or pedestrian means of access, including creation of new tracks and footpaths, and/or widening, upgrades, alterations and improvements of existing roads, tracks and footpaths;
- ~~(ix)~~(ii) bunds, embankments, swales, landscaping, signage, fencing and boundary treatments and alteration of groynes;
- ~~(x)~~(iii) provision of temporary and permanent ecological and environmental mitigation, enhancement and compensation works;
- ~~(xi)~~(iv) spoil storage and associated control measures;

- ~~(xii)~~(v) jointing bays, link boxes, cable ducts, works for trenchless installation technique crossings, cable protection, joint protection, manholes, marker posts, underground cable markers, tiles and tape, and lighting and other works associated with laying cables and/or pulling cables through cable ducts;
- ~~(xiii)~~(vi) works for the provision of apparatus including cabling, water and electricity supply works, foul drainage provision, surface water management systems, temporary drainage during installations of cables and culverting;
- ~~(xiv)~~(vii) works to alter the position of apparatus, including mains, sewers, drains and cables;
- ~~(xv)~~(viii) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- ~~(xvi)~~(ix) landscaping works and habitat creation including installation of bird and bat boxes, creation of hibernacula and reinforcement of existing planting to provide habitat;
- ~~(xvii)~~(x) works for the benefit or protection of land affected by the authorised development;
- ~~(xviii)~~(xi) working sites in connection with the carrying out of the authorised development, lay down areas and compounds and storage compounds;
- ~~(xix)~~(xii) works of restoration; and
- ~~(xx)~~(xiii) fencing or other means of enclosure; and
- ~~(xxi)~~(xiv) such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development.

PART 2

ANCILLARY WORKS

Works within the Order limits which fall within the scope of the work assessed by the environmental statement comprising—

- ~~(w)~~(a) intrusive ground investigations including the making of bore holes and trial pits;
- ~~(x)~~(b) temporary landing places, moorings or other means of accommodating vessels in the construction, maintenance and/or decommissioning of the authorised development;
- ~~(y)~~(c) marking buoys, beacons, fenders and other navigational warning or ship impact protection works; and
- ~~(z)~~(d) temporary works for the benefit or protection of land, watercourses or structures affected by the authorised development.

PART 3

REQUIREMENTS

Time limits

~~52.1~~1 The authorised development must commence no later than the expiration of seven years beginning with the date this Order comes into force.

Offshore design parameters

~~53.2~~2—(1) The wind turbine generators to be constructed or operated within Work No.1 of the authorised development must be located within the area delineated by the co-ordinates in the following table and shown on sheet 3 of the offshore order limits and boundary co-ordinates plan—

(1)	(2)	(3)
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<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>
36	51° 46.18399'N	01° 51.52207'E
37	51° 46.45215'N	01° 51.46739'E
38	51° 47.79417'N	01° 56.0602'E
39	51° 45.96006'N	01° 54.98406'E
40	51° 44.20008'N	01° 56.16270'E
41	51° 43.43466'N	01° 58.08954'E
42	51° 44.92260'N	02° 02.79174'E
43	51° 44.20590'N	02° 02.65992'E
44	51° 44.16756'N	02° 02.36766'E
45	51° 43.89822'N	02° 01.62702'E
46	51° 43.70418'N	02° 01.18500'E
47	51° 43.46172'N	02° 00.54066'E
48	51° 42.90816'N	01° 59.73738'E
49	51° 42.25464'N	01° 58.18482'E
50	51° 41.80842'N	01° 58.22082'E
51	51° 38.66118'N	01° 54.67986'E
52	51° 37.76189'N	01° 52.32853'E
53	51° 39.03140'N	01° 52.10085'E
54	51° 40.08359'N	01° 52.71647'E
55	51° 40.32461'N	01° 52.55921'E
56	51° 40.41888'N	01° 52.66356'E
57	51° 40.36970'N	01° 52.53295'E
58	51° 40.36967'N	01° 52.52982'E
59	51° 40.80925'N	01° 52.24298'E
60	51° 41.18441'N	01° 51.71421'E
61	51° 41.78502'N	01° 51.60623'E
62	51° 45.61162'N	01° 51.61163'E

(2) The offshore works must be constructed in accordance with the parameters set out in the following table—

<i>(1)</i> <i>Parameter</i>	<i>(2)</i> <i>Value</i>
Maximum number of wind turbine generators	57
Maximum total rotor swept area (m ²)	3,032,694.06
Maximum height of wind turbine generators when measured from MHWS to the tip of the vertical blade (m)	377.39
Maximum rotor diameter of each wind turbine generator (m)	337
Minimum distance from MHWS to the lowest point of the rotating blade for each wind turbine generator (m)	27
Minimum distance between wind turbine generators (downwind) measured from the centre point of each wind turbine generator (m)	1180
Minimum distance between wind turbine generators (crosswind) measured from the centre point of each wind turbine generator (m)	944
Maximum pile diameter of single pile structures (m)	17

Maximum pile diameter of two or more pile structures for wind turbine generator (m)	6
Maximum pile diameter of two or more pile structures for offshore platform (m)	3.5
Maximum total seabed footprint for installed wind turbine generators (excluding scour protection) (m ²)	189,143.5 594,729
Maximum total seabed footprint for installed wind turbine generators (including scour protection) (m ²)	4,964,261.5 2,709,162
Maximum total scour protection volume for wind turbine generator foundations (m ³)	9,313,113 4,882,186
Maximum total length of inter-array cables (km)	170
Maximum inter-array cable protection area (m ²)	204,000
Maximum inter-array cable protection volume (m ³)	119,000
Maximum dimensions of offshore substation platforms:	
Height when measured from MHWS (m) (including cranes and helideck)	61.68
Length (m)	60
Topside area (m ²)	2,400
Maximum dimensions of offshore converter platform:	
Height when measured from MHWS (m) (including cranes and helideck)	111.62
Length (m)	130
Topside area (m ²)	10,400
Maximum total seabed footprint for two offshore substation platforms:	
(excluding scour protection) (m ²)	6636.6 5890
(including scour protection) (m ²)	174,184 166,715
scour protection volume (m ³)	326,776 50,316
Maximum total length of export cables (km)	125.4
Maximum export cables cable protection area (m ²)	75,240
Maximum export cables cable protection volume (m ³)	43,890
Maximum total length of platform interconnector cable (km)	20
Maximum platform interconnector cable protection area (m ²)	24,000
Maximum platform interconnector cable protection volume (m ³)	14,000

Aviation safety

54.3—(1) The undertaker must exhibit such lights, with such shape, colour and character and at such times as are required by Air Navigation Order 2016 and/or determined necessary for aviation safety in consultation with the Defence Infrastructure Organisation Safeguarding and as directed by the Civil Aviation Authority. Lighting installed specifically to meet Ministry of Defence aviation safety requirements must remain operational for the life of the authorised development unless otherwise agreed with the Ministry of Defence.

(2) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, at least 14 days prior to the commencement of the offshore works, of the following—

- (a) the date of the commencement of construction of the offshore works;
- (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, meteorological mast and offshore substation platforms and/or offshore converter platform to be constructed; and
- (e) the latitude and longitude of each wind turbine generator, meteorological mast and offshore substation platforms and/or offshore converter platform to be constructed; and
- (f) 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 offshore works.

(3) The lights installed in accordance with paragraph (1) will be operated at the lowest permissible lighting intensity level.

Stages of authorised development onshore

~~55.4~~—(1) The onshore works may not be commenced until notification has been submitted to the ~~relevant planning~~discharging authority detailing whether the onshore works will be constructed—

- (a) in a single stage; or
- (b) in two or more stages.

(2) The onshore works may not be commenced until details of the stages of the onshore works have been submitted to and approved by the ~~relevant planning~~discharging authority.

(3) The construction of the onshore works must follow the details provided under sub-paragraph (2) of this requirement.

Substation works

~~56.5~~—(1) Construction of Work No. 11 (onshore substation) must not commence until details of that Work have been submitted to and approved by the ~~relevant planning~~discharging authority, and the details submitted must include—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) the dimensions, colour and materials used for the buildings;
- (f) security fencing;
- (g) vehicular and pedestrian access, parking and circulation areas;
- (h) operational external lighting; and
- (i) proposed and existing functional services above and below ground, including drainage, surface water drainage, power and communications cables and pipelines, manholes and supports.

(2) The details submitted under sub-paragraph (1) of this requirement must be in accordance with requirement 6 (detailed design parameters onshore) and substantially in accordance with the design vision.

(3) Work No. 11 must be carried out in accordance with the approved details.

Detailed design parameters onshore

57.6.—(1) The onshore works must not exceed the parameters set out in the following table and sub-paragraph (2)—

(1) Parameter	(2) Value
Maximum number of landfall transition joint bays	2

(2) In relation to Work No. 11 (onshore substation)—

- (a) the highest part of any building, any external electrical equipment or enclosure, excluding lightning rods, must not exceed a height of 13m above Ordnance Datum;
- (b) the total area of the fenced compound (excluding its accesses) must not exceed 58,800m²;
- (c) the lightning rods within the fenced compound must not exceed a height of 18m above Ordnance Datum;

Provision of landscaping

58.7.—(1) Work No. 11 must not be commenced until a written landscaping scheme and associated work programme in accordance with the outline landscape and ecological management strategy for Work No. 11 has been submitted to and approved by the ~~relevant planning~~[discharging](#) authority [in consultation with Natural England](#).

(2) The written landscaping 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; and
- (b) implementation timetables for all landscaping works within Work No. 11.

(3) The landscaping must be carried out in accordance with the approved details.

Code of construction practice

59.8.—(1) No stage of the onshore works may commence until a code of construction practice (which must accord with the outline code of construction practice) for that stage has been submitted to and approved by the ~~relevant planning~~[discharging](#) authority [in consultation with Natural England](#).

(2) The onshore works must be constructed in accordance with the approved details.

Construction traffic management plan

60.9.—(1) No stage of the onshore works may commence until for that stage a construction traffic management plan (which must accord with the outline construction traffic management plan) for that stage has been submitted to and approved by the ~~relevant planning~~[discharging](#) authority [in consultation with National Highways](#).

(2) The onshore works must be carried out in accordance with the approved details.

Permanent highway accesses

61.10.—(1) No new permanent means of access to a highway to be used by vehicular traffic, or any permanent alteration to an existing means of access to a highway used by vehicular traffic may be formed until written details of the design, layout and siting of that new or altered access have been submitted to and approved by the ~~relevant planning~~[discharging](#) authority in consultation with the relevant highway authority.

(2) The highway accesses must be constructed in accordance with the approved details.

Onshore archaeology

~~11.~~—(1) Geo-archaeological and archaeological evaluation and mitigation surveys must be carried out in accordance with the archaeological mitigation strategy.

~~62.~~(2) No stage of the onshore works may commence until, for that stage ~~a~~, an archaeological written scheme(s) of ~~archaeological~~ investigation in accordance with the outline onshore written scheme(s) of investigation as appropriate for the relevant stage has been submitted to and approved by the ~~relevant planning~~discharging authority in consultation with Historic England.

~~(1)~~(3) The onshore works must be carried out in accordance with the approved ~~details~~archaeological written scheme(s) of investigation as applicable at each stage.

~~(2)~~(4) Onshore~~Intrusive onshore~~ site preparation works, including those necessary to allow production of any scheme required under sub-paragraph (2), must only take place in accordance with the applicable details set out in ~~the outline onshore~~an approved written scheme of investigation for such works.

Ecological management plan

~~63.~~12.—(1) No stage of the onshore works may commence until for that stage an ecological management plan in accordance with the outline landscape and ecology management strategy as appropriate for the relevant stage, has been submitted to and approved by the ~~relevant planning~~discharging authority in consultation with Natural England.

(2) The ecological management plan(s) submitted under sub-paragraph (1) must include an implementation timetable and must be implemented as approved.

(3) Pre-commencement works must only take place in accordance with the relevant details set out in the outline landscape and ecology management strategy as certified.

Soil management plan

~~64.~~13.—(1) No stage of the onshore works may commence until for that stage a soil management plan in accordance with the measures set out in the code of construction practice as appropriate for the relevant stage, has been submitted to and approved by the ~~relevant planning~~discharging authority in consultation with Natural England.

(2) The onshore works must be carried out in accordance with the approved soil management plan(s).

European protected species: onshore

~~65.~~14.—(1) No stage of the onshore works or other than surveying and investigation necessary to comply with this requirement may commence until, for that stage, pre-construction survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by any part of that stage of the onshore works.

(2) Where a European protected species is shown to be present, the relevant stage of the onshore works is likely to affect the species must not commence until a scheme of protection and mitigation measures for that stage has been submitted to the ~~relevant planning~~discharging authority or a European protected species licence is granted by Natural England.

(3) Each stage of the onshore works which requires a scheme of protection and mitigation measures in accordance with sub-paragraph (2) of this requirement must be carried out in accordance with the approved scheme.

(4) In this paragraph, “European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017.

Groundwater monitoring

~~66-15~~. The undertaker must prepare and submit to the ~~relevant planning~~[discharging](#) authority for approval a scheme of investigation of hydraulic connectivity of groundwater supplying private water supplies. The undertaker shall implement the approved scheme.

Restoration of land used temporarily for construction

~~67-16~~. Unless provided for in requirement 20, any land landward of MLWS within the Order limits which is used temporarily for construction of the onshore works and not ultimately incorporated in permanent works or approved landscaping must be reinstated within twelve months of completion of the relevant stage of the onshore works.

Control of noise during operational stage

~~68-17~~—(1) The noise rating level for the standard operation of Work No. 11 must not exceed—

- (a) 33dB $L_{A_{r,Tr}}$ at any time at a free field location immediately adjacent to the following noise sensitive locations—
 - (i) Normans Farm (grid reference 608446 228492);
 - (ii) Mulberry Lodge (grid reference 608753 228577);
 - (iii) Jubilee Villa (grid reference 609061 228932); and
- (b) 32dB $L_{A_{r,Tr}}$ at any time at a free field location immediately adjacent to Hollylodge Farm (grid reference 609483 229368~~);~~ [and](#)
- [\(c\) 31dB \$L_{A_{r,Tr}}\$ at any time at a free field location immediately adjacent to Grange Farm \(grid reference 608681 230164\).](#)

(2) Prior to the commencement of operation of Work No. 11, a noise investigation protocol must be submitted to and approved by the ~~relevant planning~~[discharging](#) authority.

(3) The determination of $L_{A_{r,Tr}}$ must be in accordance with BS 4142:2014+A1:2019. The reference method set out in Annex D to BS 4142:2014+A1:2019 (or any successor thereto) must be used in the assessment of whether tonal penalties apply. The noise investigation protocol must identify—

- (a) the required meteorological and other conditions under which the measurements will be taken, acknowledging that data obtained during emergency operation or testing of certain plant and equipment is not to be taken into account, and
- (b) suitable monitoring locations (and alternative locations if appropriate).

(4) For the purposes of this requirement “standard operation” means the ordinary operation of the substations excluding emergency operation and the testing of plant and equipment associated with emergency operation.

Skills and Employment Plan

~~69-18~~—(1) No stage of the authorised development may commence until a skills and employment plan, substantially in accordance with the outline skills and employment plan has been submitted to and approved by the ~~relevant planning~~[discharging](#) authority.

(2) The skills and employment plan must be implemented in accordance with the approved details.

Onshore build options

~~70-19~~—(1) Subject to paragraph (2), the undertaker may commence ~~;~~ [onshore works](#) or exercise powers of compulsory acquisition under Part 5 of this Order ~~;~~ [in relation to](#) ~~;~~ only—

- (a) build option 1;
- (b) build option 2a; and

(c) build option 2b.

(2) The onshore works must not commence, nor powers of compulsory acquisition under Part 5 of this Order be exercised, until notification has been submitted to the ~~relevant planning~~[discharging](#) authority as to whether the undertaker intends to commence build option 1, build option 2a or build option 2b.

Reuse of temporary works with the onshore works for Five Estuaries

~~71.20.~~—(1) In the event that any temporary works which have been constructed pursuant to any development consent order that may be made by the Secretary of State in relation to Five Estuaries are proposed to be reused by the undertaker in connection with the authorised development, such reuse may not commence until a scheme which accords with paragraph (2) has been submitted to and approved by the ~~relevant planning~~[discharging](#) authority.

(2) The scheme to be submitted for approval under paragraph (1) must include details of the temporary works to be reused and a timetable for their reuse. The scheme must be implemented as approved.

(3) Where in the event that any temporary works which have been constructed pursuant to this Order are to be subsequently be used for the purposes of construction of Five Estuaries, the undertaker will not be required to maintain, restore or reinstate any such temporary works.

Biodiversity net gain

~~72.21.~~—(1) No stage of the onshore works may commence until a biodiversity net gain assessment (which must accord with the outline biodiversity net gain strategy) in relation to that stage has been submitted to and approved by the ~~relevant planning~~[discharging](#) authority [in consultation with Natural England](#).

(2) The biodiversity net gain assessment must be implemented as approved.

Operational Drainage Strategy

~~73.22.~~—(1) No part of Work No. 11 or Work No. 12 may commence until an operational drainage strategy for operation of that part has been submitted to and approved by the ~~relevant planning~~[discharging](#) authority.

(2) The operational drainage strategy must be in accordance with the outline operational drainage strategy.

(3) The operational drainage strategy must be implemented as approved.

Horizontal directional drilling method statement

~~74.23.~~—(1) No part of Work Nos. 4B, 4C, 4D, 6 or 12 may commence until a horizontal directional drill method statement and contingency plan for that part has been submitted to and approved by the ~~relevant planning~~[discharging](#) authority [in consultation with Natural England](#).

(2) The horizontal directional drill method statement and contingency plan must accord with the principles set out in the outline horizontal directional drill method statement and contingency plan.

Public rights of way

~~75.24.~~—(1) No stage of the onshore works may commence until a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the streets, access and rights of way plans for that stage has been submitted to and approved by the ~~relevant planning~~[discharging](#) authority.

(2) The public rights of way management plan must be substantially in accordance with the outline public rights of way management plan.

(3) The public rights of way management plan must be implemented as approved.

Offshore decommissioning

~~76-25~~. No offshore works may commence until a written decommissioning programme in compliance with any notice served upon the undertaker by the Secretary of State pursuant to section 105(2) (requirement to prepare decommissioning programmes) of the 2004 Act has been submitted to the Secretary of State for approval.

Onshore decommissioning

~~77-26~~—(1) A written scheme of decommissioning for the onshore works must be submitted to and approved by the ~~relevant-planning~~discharging authority at least six months prior to any decommissioning works commencing.

(2) The written scheme of decommissioning for the onshore works must include a code of construction practice and the approved scheme must be implemented as approved in the carrying out of any decommissioning works or relevant part of it.

Requirement for written approval

~~78-27~~. Where under any of the above requirements the approval or agreement of the Secretary of State, the ~~relevant-planning~~discharging authority or another person is required, that approval or agreement must be given in writing.

Amendments to approved details

~~79-28~~. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed by the Secretary of State, the ~~relevant-planning~~discharging authority or another person.

Obstacle free zone for navigational safety

~~80-29~~—(1) Unless otherwise agreed with the MCA, no wind turbine generator or offshore platform shall be installed within the area defined by the coordinates as specified in the table in sub-paragraph (3).

(2) If agreement with the MCA is obtained pursuant to sub-paragraph (1), the undertaker must install any infrastructure in accordance with the details approved under sub-paragraph (1).

(3) The coordinates referred to in sub-paragraph (1) are specified in the table—

(1) Point	(2) Latitude	(3) Longitude
A	51° 45.7956' N	001° 51.5983' E
B	51° 46.4522' N	001° 51.4674' E
C	51° 47.7942' N	001° 56.0600' E
D	51° 47.5410' N	001° 55.9115' E
E	51° 46.7564' N	001° 53.2251' E
F	51° 42.5994' N	001° 51.7675' E
G	51° 40.9325' N	001° 52.0693' E
H	51° 41.1844' N	001° 51.7142' E
I	51° 41.7850' N	001° 51.6062' E
J	51° 39.0314' N	001° 52.1008' E
K	51° 39.4391' N	001° 52.3393' E
L	51° 37.8725' N	001° 52.6222' E
M	51° 37.7619' N	001° 52.3285' E

PART 4

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

81.30. In this Part “application” means an application for any consent, agreement or approval required by a requirement whether or not the application seeks to discharge a requirement in whole or in part.

Applications made under requirements

82.31.—(1) Where an application has been made to the ~~relevant planning~~discharging authority for any agreement or approval required pursuant to a requirement included in this Order, the ~~relevant planning~~discharging authority must give notice to the undertaker of their decision, including the reasons, on the application, within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the ~~relevant planning~~discharging authority; or
- (b) such longer period as may be agreed by the undertaker and the ~~relevant planning~~discharging authority.

(2) In determining any application made to the ~~relevant planning~~discharging authority for any consent, agreement or approval required by a requirement contained in Part 3 of Schedule 1 (requirements) to this Order, the discharging authority may—

- (a) give or refuse its consent, agreement or approval; or
- (b) give its consent, agreement or approval either subject to reasonable conditions, or unconditionally,

and when consent, agreement or approval is refused or granted subject to conditions the discharging authority must provide its reasons for that decision with notice of the decision.

(3) In the event that the discharging authority does not determine an application within the period set out in sub-paragraph (1), the discharging authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

Further information

83.32.—(1) Where an application has been made under paragraph (2) the ~~relevant planning~~discharging authority has the right to request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) If the ~~relevant planning~~discharging authority considers further information is needed, and the requirement does not specify that consultation with a requirement consultee is required, it must, within 21 days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement indicates that consultation must take place with a consultee the ~~relevant planning~~discharging authority must issue the consultation to the requirement consultee within five working days of receipt of the application. Where the consultee requires further information they must notify the ~~relevant planning~~discharging authority in writing specifying the further information required within 14 days of receipt of the consultation. The ~~relevant planning~~discharging authority must notify the undertaker in writing specifying any further information requested by the consultee within five working days of receipt of such a request.

(4) In the event that the ~~relevant planning~~discharging authority does not give such notification as specified in sub-paragraphs (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

Provision of information by Consultees

~~84.33.~~—(1) Any consultee who receives a consultation under paragraph 32(3) must respond to that request within 28 days from receipt unless sub-paragraph (2) of this paragraph applies.

(2) Where any consultee requests further information in accordance with the timescales set out in paragraph 32(3) then they must respond to the consultation within ten working days from the receipt of the further information requested.

Fees

~~85.34.~~—(1) Where an application is made to the ~~relevant planning~~discharging authority for agreement or approval in respect of a requirement the fee for the discharge of conditions as specified in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (or any regulations replacing the same) is to be paid by the undertaker to the ~~relevant planning~~discharging authority in accordance with these regulations unless a bespoke arrangement has been agreed between the Applicant and discharging authority and legally secured.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of the application being rejected as invalidly made.

Appeal

~~86.35.~~—(1) The undertaker may appeal in the event that—

- (a) the ~~relevant planning~~discharging authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions; or
- (b) within the time period specified in paragraph (2).

(2) The appeal process is to be as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the ~~relevant planning~~discharging authority and any consultee required to be consulted pursuant to the requirement which is the subject of the appeal (together with the undertaker, these are the “appeal parties”);
- (b) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person (the “appointed person”) to determine the appeal and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for their attention should be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
- (c) the ~~relevant planning~~discharging authority and any consultee required to be consulted pursuant to the requirement which is the subject of the appeal must submit written representations to the appointed person in respect of the appeal within ten working days of the start date 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;
- (d) the appeal parties must make any counter-submissions to the appointed person within ten working days of receipt of written representations pursuant to sub-paragraph (c); and
- (e) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

(3) The appointment of the person pursuant to sub-paragraph (2)(b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(a) S.I. 2012/2920.

(4) In the event that the appointed person considers that further information is necessary to consider the appeal, the appointed person must notify the appeal parties in writing specifying the further information required and the date by which the information is to be submitted and the appointed person must make any notification and set the date for the receipt of such further information having regard to the timescales in sub-paragraph (2).

(5) Any further information required under sub-paragraph (4) must be provided by the appeal party from whom the further information was requested to the appointed person and other appeal parties, the ~~relevant planning~~discharging authority and any consultee required to be consulted pursuant to the requirement the subject of the appeal on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten working days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (2)(e).

(6) On an appeal under this sub-paragraph, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the ~~relevant planning~~discharging authority (whether the appeal relates to that part of it or not).

(7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant 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 and may deal with the application as if it had been made to the appointed person in the first instance.

(9) The decision of the appointed person on an appeal is to be 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.

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

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the ~~relevant planning~~discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) On application by the ~~relevant planning~~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 relevant guidance on the Planning Practice Guidance website or any official circular or guidance which may from time to time replace it.

SCHEDULE 2

Article 8

STREETS AND PUBLIC RIGHTS OF WAY SUBJECT TO STREET WORKS

(1) <i>Street or public right of way</i>	(2) <i>Extent as shown on the street plan or public rights of way plan</i>
Private Access Track	Approximately 746 metres of Private Access Track as shown between points marked 1a and 1b on the streets plan
Private Access Track	Approximately 119 metres of Private Access Track as shown between points marked 1c and 1d on the streets plan
Footpath Great Clacton FP29	Approximately 455 metres of Great Clacton FP29 between points marked 1a and 1b on sheet 1 of the public rights of way plan
Footpath Frinton and Walton FP41	Approximately 24 metres of Frinton and Walton FP41 between points marked 1b and 1c on sheet 1 of the public rights of way plan
Footpath Frinton and Walton FP3	Approximately 822 metres of Frinton and Walton FP3 between points marked 1d and 1e on sheet 1 of the public rights of way plan
Bridleway Frinton and Walton BR2	Approximately 41 metres of Frinton and Walton BR2 between points marked 1f and 1g on sheet 1 of the public rights of way plan
Private Access Track	Approximately 90 metres of Private Access Track as shown between points marked 2a and 2b on the streets plan
B1032 (Clacton Road)	Approximately 412 metres of B1032 (Clacton Road) as shown between points marked 2c and 2d on the streets plan
Little Clacton Road	Approximately 123 metres of Little Clacton Road as shown between points marked 3a and 3b on the streets plan
Footpath Frinton and Walton FP6	Approximately 2 metres of Frinton and Walton FP6 between points marked 3a and 3b on the public rights of way plan
Footpath Frinton and Walton FP38	Approximately 148 metres of Frinton and Walton FP38 between points marked 3c and 3d on sheet 3 of the public rights of way plan
Footpath Frinton and Walton FP11	Approximately 166 metres of Frinton and Walton FP11 between points marked 3e and 3f on sheet 3 of the public rights of way plan
B1033 (Thorpe Road)	Approximately 352 metres of B1033 (Thorpe Road) as shown between points marked 5a and 5b on the streets plan
Footpath Thorpe Le Soken FP13	Approximately 283 metres of Thorpe Le Soken FP13 between points marked 5a and 5b on the public rights of way plan
B1034 (Sneating Hall Lane)	Approximately 332 metres of B1034 (Sneating Hall Lane) as shown between points marked 6a and 6b on the streets plan

Damant's Farm Lane	Approximately 329 metres of Damant's Farm Lane as shown between points marked 5e and 5f on the streets plan
Footpath Thorpe Le Soken FP13	Approximately 283 metres of Thorpe Le Soken FP13 between points marked 6a and 6b on sheet 6 of the public rights of way plan
B1414 (Landermere Road)	Approximately 345 metres of B1414 (Landermere Road) as shown between points marked 6a and 6b on the streets plan
Footpath Thorpe Le Soken FP7	Approximately 27 metres of Thorpe Le Soken FP7 between points marked 6a and 6b on sheet 6 of the public rights of way plan
Golden Lane	Approximately 249 metres of Golden Lane as shown between points marked 7a and 7b on the streets plan
Private Access Track	Approximately 100 metres of Private Access Track as shown between points marked 7c and 7d on the streets plan
Footpath Thorpe Le Soken FP3	Approximately 125 metres of Thorpe Le Soken FP3 between points marked 7i and 7j on sheet 7 of the public rights of way plan
Footpath Thorpe Le Soken FP1	Approximately 92 metres of Thorpe Le Soken FP1 between points marked 7k and 7l on sheet 7 of the public rights of way plan
B1035 (Tendring Road)	Approximately 243 metres of B1035 (Tendring Road) as shown between points marked 8a and 8b on the streets plan
B1035 (Tendring Road)	Approximately 80 metres of B1035 (Tendring Road) as shown between points marked 8c and 8d on the streets plan
Swan Road	Approximately 11 metres of Swan Road as shown between points marked 8e and 8f on the Streets Plan
Swan Road	Approximately 60 metres of Swan Road as shown between points marked 8f and 8g on the streets plan
Swan Road	Approximately 12 metres of Swan Road as shown between points marked 8f and 8h on the streets plan
B1035 (Thorpe Road)	Approximately 222 metres of B1035 (Thorpe Road) as shown between points marked 8i and 8j on the streets plan
Footpath Thorpe Le Soken FP18	Approximately 212 metres of Thorpe Le Soken FP18 between points marked 8a and 8b on sheet 8 of the public rights of way plan
Footpath Beaumont Cum Moze FP18	Approximately 25 metres of Beaumont Cum Moze FP18 between points marked 8b and 8c on sheet 8 of the public rights of way plan
Lodge Lane	Approximately 222 metres of Lodge Lane as shown between points marked 9a and 9b on the streets plan
Footpath Tendring FP22	Approximately 131 metres of Tendring FP22 between points marked 9e and 9f on sheet 9 of the public rights of way plan
Footpath Tendring FP8	Approximately 95 metres of Tendring FP8 between points marked 9g and 9h on sheet 9 of

Footpath Tendring FP3	the public rights of way plan Approximately 101 metres of Tendring FP3 between points marked 9i and 9j on sheet 9 of the public rights of way plan
Wolves Hall Lane	Approximately 238 metres of Wolves Hall Lane as shown between points marked 10a and 10b on the streets plan
Footpath Tendring FP1	Approximately 132 metres of Tendring FP1 between points marked 10a and 10b on sheet 10 of the public rights of way plan
Stones Green Road	Approximately 366 metres of Stones Green Road as shown between points marked 10c and 10d on the streets plan
Private Access Track	Approximately 105 metres of Private Access Track as shown between points marked 11a and 11b on the streets plan
A120	Approximately 96 metres of A120 as shown between points marked 11c and 11d on the streets plan
Private Access Track	Approximately 15 metres of Private Access Track as shown between points marked 11e and 11f on the streets plan
Footpath Wix FP31	Approximately 140 metres of Wix FP31 between points marked 11a and 11b on sheet 11 of the public rights of way plan
Footpath Wix FP32	Approximately 105 metres of Wix FP32 between points marked 11c and 11d on sheet 11 of the public rights of way plan
B1035 (Clacton Road)	Approximately 310 metres of B1035 (Clacton Road) as shown between points marked 12a and 12b on the Streets Plan
Private Access Track	Approximately 99 metres of Private Access Track as shown between points marked 12c and 12d on the Streets Plan
Private Access Track	Approximately 101 metres of Private Access Track as shown between points marked 12e and 12f on the streets plan
B1035 (Clacton Road)	Approximately 350 metres of B1035 (Clacton Road) as shown between points marked 12g and 12h on the streets plan
Bentley Road	Approximately 1484 metres of Bentley Road as shown between points marked 13a and 13b on the streets plan
A120	Approximately 237 metres of A120 as shown between points marked 13c and 13d on the streets plan
Payne's Lane	Approximately 172 metres of Payne's Lane as shown between points marked 13e and 13f on the streets plan
Spratts Lane	Approximately 185 metres of Spratts Lane as shown between points marked 14a and 14b on the streets plan
Barlon Road	Approximately 171 metres of Barlon Road as shown between points marked 14c and 14d on the streets plan
Private Access Track	Approximately 130 metres of Private Access

	Track as shown between points marked 15a and 15b on the streets plan
Footpath Little Bromley FP17	Approximately 96 metres of Little Bromley FP17 between points marked 14a and 14b on sheet 14 of the public rights of way plan
Footpath Little Bromley FP16	Approximately 130 metres of Little Bromley FP16 between points marked 14c and 14d on sheet 14 of the public rights of way plan
Ardleigh Road	Approximately 523 metres of Ardleigh Road as shown between points marked 15c and 15d on the streets plan
Grange Road	Approximately 154 metres of Grange Road as shown between points marked 16a and 16b on the streets plan
Grange Road	Approximately 458 metres of Grange Road as shown between points marked 16c and 16d on the streets plan

SCHEDULE 3

TRAFFIC REGULATION

Articles 11, 12 and 14

PART 1

STREETS TO BE TEMPORARILY CLOSED OR RESTRICTED

(1)	(2)
<i>Street to be temporarily closed or restricted</i>	<i>Extent as shown on the streets plan</i>
Private Access Track	Approximately 746 metres of Private Access Track as shown between points marked 1a and 1b on the streets plan
Private Access Track	Approximately 119 metres of Private Access Track as shown between points marked 1c and 1d on the streets plan
Private Access Track	Approximately 90 metres of Private Access Track as shown between points marked 2a and 2b on the streets plan
B1032 (Clacton Road)	Approximately 412 metres of B1032 (Clacton Road) as shown between points marked 2c and 2d on the streets plan
Little Clacton Road	Approximately 123 metres of Little Clacton Road as shown between points marked 3a and 3b on the streets plan
B1033 (Thorpe Road)	Approximately 352 metres of B1033 (Thorpe Road) as shown between points marked 5a and 5b on the streets plan
B1034 (Sneating Hall Lane)	Approximately 332 metres of B1034 (Sneating Hall Lane) as shown between points marked 6a and 6b on the streets plan
Damant's Farm Lane	Approximately 329 metres of Damant's Farm Lane as shown between points marked 6c and 6d on the streets plan
B1414 (Landermere Road)	Approximately 345 metres of B1414 (Landermere Road) as shown between points marked 7a and 7b on the streets plan
Golden Lane	Approximately 249 metres of Golden Lane as shown between points marked 8a and 8b on the streets plan
Private Access Track	Approximately 100 metres of Private Access Track as shown between points marked 8c and 8d on the Streets Plan
B1035 (Tendring Road)	Approximately 243 metres of B1035 (Tendring Road) as shown between points marked 9a and 9b on the streets plan
B1035 (Tendring Road)	Approximately 80 metres of B1035 (Tendring Road) as shown between points marked 9c and 9d on the streets plan
Swan Road	Approximately 11 metres of Swan Road as shown between points marked 9e and 9f on the streets plan

Swan Road	Approximately 60 metres of Swan Road as shown between points marked 9f and 9g on of the streets plan
Swan Road	Approximately 12 metres of Swan Road as shown between points marked 9f and 9h on of the streets plan
B1035 (Thorpe Road)	Approximately 222 metres of B1035 (Thorpe Road) as shown between points marked 9i and 9j on the streets plan
Lodge Lane	Approximately 222 metres of Lodge Lane as shown between points marked 10a and 10b on the streets plan
Wolves Hall Lane	Approximately 238 metres of Wolves Hall Lane as shown between points marked 11a and 11b on the streets plan
Stones Green Road	Approximately 366 metres of Stones Green Road as shown between points marked 12a and 12b on the streets plan
Private Access Track	Approximately 105 metres of Private Access Track as shown between points marked 12c and 12d on the streets plan
A120	Approximately 96 metres of A120 as shown between points marked 12e and 12f on the streets plan
Private Access Track	Approximately 15 metres of Private Access Track as shown between points marked 12g and 12h on the streets plan
B1035 (Clacton Road)	Approximately 310 metres of B1035 (Clacton Road) as shown between points marked 13a and 3b on the streets plan
Private Access Track	Approximately 99 metres of Private Access Track as shown between points marked 13c and 13d on the streets plan
Private Access Track	Approximately 101 metres of Private Access Track as shown between points marked 13e and 13f on the streets plan
B1035 (Clacton Road)	Approximately 350 metres of B1035 (Clacton Road) as shown between points marked 14a and 14b on the streets plan
Bentley Road	Approximately 1484 metres of Bentley Road as shown between points marked 15a and 16a on the streets plan
Payne's Lane	Approximately 172 metres of Payne's Lane as shown between points marked 15b and 15c on the streets plan
A120	Approximately 237 metres of A120 as shown between points marked 16b and 16c on the streets plan
Spratts Lane	Approximately 185 metres of Spratts Lane as shown between points marked 17a and 17b on the streets plan
Barlon Road	Approximately 171 metres of Barlon Road as shown between points marked 17c and 17d on the streets plan
Private Access Track	Approximately 130 metres of Private Access Track as shown between points marked 17e and

Ardleigh Road	17f on the streets plan Approximately 523 metres of Ardleigh Road as shown between points marked 18a and 18b on the streets plan
Grange Road	Approximately 154 metres of Grange Road as shown between points marked 18c and 18d on the streets plan
Grange Road	Approximately 458 metres of Grange Road as shown between points marked 18e and 18f on the streets plan

PART 2

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED OR RESTRICTED

<i>(1)</i> <i>Public right of way to be temporarily closed or restricted</i>	<i>(2)</i> <i>Extent as shown on the public rights of way plan</i>
Footpath Great Clacton FP29	Approximately 455 metres of Great Clacton FP29 between points marked 1a and 1b on the public rights of way plan
Footpath Frinton and Walton FP41	Approximately 24 metres of Frinton and Walton FP41 between points marked 1b and 1c on the public rights of way plan
Footpath Frinton and Walton FP3	Approximately 822 metres of Frinton and Walton FP3 between points marked 1d and 1e on the public rights of way plan
Bridleway Frinton and Walton BR2	Approximately 41 metres of Frinton and Walton BR2 between points marked 1f and 1g on the public rights of way plan
Footpath Frinton and Walton FP6	Approximately 2 metres of Frinton and Walton FP6 between points marked 3a and 3b on sheet 3 of the public rights of way plan
Footpath Frinton and Walton FP38	Approximately 148 metres of Frinton and Walton FP38 between points marked 3c and 3d on sheet 3 of the public rights of way plan
Footpath Frinton and Walton FP11	Approximately 166 metres of Frinton and Walton FP11 between points marked 3e and 3f on sheet 3 of the public rights of way plan
Footpath Thorpe Le Soken FP13	Approximately 283 metres of Thorpe Le Soken FP13 between points marked 5a and 5b on sheet 5 of the public rights of way plan
Footpath Thorpe Le Soken FP7	Approximately 27 metres of Thorpe Le Soken FP7 between points marked 6a and 6b on sheet 6 of the public rights of way plan
Footpath Thorpe Le Soken FP4	Approximately 40 metres of Thorpe Le Soken FP4 between points marked 7a and 7b on sheet 7 of the public rights of way plan
Footpath Thorpe Le Soken FP4	Approximately 30 metres of Thorpe Le Soken FP4 between points marked 7c and 7d on sheet 7 of the public rights of way plan
Footpath Thorpe Le Soken FP4	Approximately 192 metres of Thorpe Le Soken FP4 between points marked 7e and 7f on sheet 8 of the public rights of way plan
Footpath Thorpe Le Soken FP3	Approximately 15 metres of Thorpe Le Soken

Footpath Thorpe Le Soken FP3	FP3 between points marked 7g and 7h on sheet 7 of the public rights of way plan Approximately 125 metres of Thorpe Le Soken FP3 between points marked 7i and 7j on sheet 7 of the public rights of way plan
Footpath Thorpe Le Soken FP1	Approximately 92 metres of Thorpe Le Soken FP1 between points marked 7k and 7l on sheet 7 of the public rights of way plan
Footpath Thorpe Le Soken FP18	Approximately 212 metres of Thorpe Le Soken FP18 between points marked 8a and 8b on sheet 8 of the public rights of way plan
Footpath Beaumont Cum Moze FP18	Approximately 25 metres of Beaumont Cum Moze FP18 between points marked 8b and 8c on sheet 8 of the public rights of way plan
Footpath Tendring FP8	Approximately 42 metres of Tendring FP8 between points marked 9a and 9b on sheet 9 of the public rights of way plan
Footpath Tendring FP22	Approximately 6 metres of Tendring FP22 between points marked 9c and 9d on sheet 9 of the public rights of way plan
Footpath Tendring FP22	Approximately 131 metres of Tendring FP22 between points marked 9e and 9f on sheet 9 of the public rights of way plan
Footpath Tendring FP8	Approximately 95 metres of Tendring FP8 between points marked 9g and 9h on sheet 9 of the public rights of way plan
Footpath Tendring FP3	Approximately 101 metres of Tendring FP3 between points marked 9i and 9j on sheet 9 of the public rights of way plan
Footpath Tendring FP1	Approximately 132 metres of Tendring FP1 between points marked 10a and 10b on sheet 10 of the public rights of way plan
Footpath Wix FP31	Approximately 140 metres of Wix FP31 between points marked 11a and 11b on sheet 11 of the public rights of way plan
Footpath Wix FP32	Approximately 105 metres of Wix FP32 between points marked 11c and 11d on sheet 11 of the public rights of way plan
Footpath Wix FP15	Approximately 15 metres of Wix FP15 between points marked 11e and 11f on sheet 11 of the public rights of way plan
Footpath Wix FP37	Approximately 91 metres of Wix FP37 between points marked 12a and 12b on sheet 12 of the public rights of way plan
Footpath Little Bromley FP17	Approximately 96 metres of Little Bromley FP17 between points marked 14a and 14b on sheet 14 of the public rights of way plan
Footpath Little Bromley FP16	Approximately 130 metres of Little Bromley FP16 between points marked 15a and 15b on sheet 15 of the public rights of way plan
Footpath Little Bromley FP15	Approximately 28 metres of Little Bromley FP15 between points marked 15c and 15d on sheet 15 of the public rights of way plan

PART 3

SPEED LIMITS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Speed limit</i>
District of Tendring	Approximately 1,408 metres of B1033 (Thorpe Road/Frinton Road) as shown between points marked 5a and 5b on the temporary traffic regulation order plan	40 miles per hour
District of Tendring	Approximately 895 <u>5</u> metres of Golden Lane as shown between points marked 7a and 7b on the temporary traffic regulation order plan	40 miles per hour
District of Tendring	Approximately 672 <u>1,138</u> metres of B1035 (Thorpe Road/Tendring Road) as shown between points marked 8a <u>7c</u> and 8b <u>8a</u> on the temporary traffic regulation order plan	30 <u>40</u> miles per hour
District of Tendring	Approximately 160 metres of Whitehall Lane as shown between points marked 8b, 8c and 8d on the temporary traffic regulation order plan	40 miles per hour
District of Tendring	Approximately 91 metres of Swan Road as shown between points marked 8e <u>8e, 8f</u> and 8d and 8d and 8e <u>8g</u> on the temporary traffic regulation order plan	30 <u>40</u> miles per hour
District of Tendring	Approximately 528 metres of the B1035 (Clacton Road) as shown between points marked 12a and 12b on the temporary traffic regulation order plan	40 miles per hour
District of Tendring	Approximately 1,586 metres of Bentley Road as shown between points marked 13a and 13b on the temporary traffic regulation order plan	40 miles per hour
District of Tendring	Approximately 1,201 metres of Ardleigh Road / Little Bromley Road as shown between points marked 16a and 16b on the temporary traffic regulation order plan	30 miles per hour

SCHEDULE 4

ACCESS TO WORKS

Article 13

<i>(1)</i> <i>Street</i>	<i>(2)</i> <i>Location of access</i>	<i>(3)</i> <i>Purpose for which access is required</i>
Church Lane	The point marked OA-1 on sheet 2 of the access to works plan	Vehicular access for operational and maintenance access
B1032 (Clacton Road)	The point marked AC-1 on sheet 2 of the access to works plan	Vehicular access for construction access
B1032 (Clacton Road)	The point marked OA-2 on sheet 2 of the access to works plan	Vehicular access for operational and maintenance access
B1032 (Clacton Road)	The point marked AC-2 on sheet 2 of the access to works plan	Vehicular access for construction access
B1032 (Clacton Road)	The point marked OA-3 on sheet 2 of the access to works plan	Vehicular access for operational and maintenance access
Little Clacton Road	The point marked OA-4 on sheet 3 of the access to works plan	Vehicular access for operational and maintenance access
Little Clacton Road	The point marked CR-1 on sheet 3 of the access to works plan	Vehicular access for construction crossing
Little Clacton Road	The point marked OA-5 on sheet 3 of the access to works plan	Vehicular access for operational and maintenance access
Pork Lane	The point marked OA-6 on sheet 4 of the access to works plan	Vehicular access for operational and maintenance access
Pork Lane	The point marked OA-7 on sheet 4 of the access to works plan	Vehicular access for operational and maintenance access
Thorpe Park Lane	The point marked OA-8 on sheet 4 of the access to works plan	Vehicular access for operational and maintenance access
B1033 (Thorpe Road)	The point marked AC-3A on sheet 5 of the access to works plan	Vehicular access for construction access
B1033 (Thorpe Road)	The point marked OA-9 on sheet 5 of the access to works plan	Vehicular access for operational and maintenance access
B1033 (Thorpe Road)	The point marked AC-3B on sheet 5 of the access to works plan	Vehicular access for construction access
B1033 (Thorpe Road)	The point marked OA-10 on sheet 5 of the access to works plan	Vehicular access for operational and maintenance access
B1034 (Sneating Hall Lane)	The point marked OA-11 on	Vehicular access for

	sheet 5 of the access to works plan	operational and maintenance access
B1034 (Sneating Hall Lane)	The point marked CR-2 on sheet 5 of the access to works plan	Vehicular access for construction crossing
B1034 (Sneating Hall Lane)	The point marked OA-12 on sheet 5 of the access to works plan	Vehicular access for operational and maintenance access
Dament's Farm Lane	The point marked OA-13 on sheet 5 of the access to works plan	Vehicular access for operational and maintenance access
Dament's Farm Lane	The point marked CR-3 on sheet 5 of the access to works plan	Vehicular access for construction crossing
Walton Road	The point marked OA-14 on sheet 6 of the access to works plan	Vehicular access for operational and maintenance access
the B1414 (Landermere Road)	The point marked OA-15 on sheet 6 of the access to works plan	Vehicular access for operational and maintenance access
the B1414 (Landermere Road)	The point marked CR-4 on sheet 6 of the access to works plan	Vehicular access for construction crossing
the B1414 (Landermere Road)	The point marked OA-16 on sheet 6 of the access to works plan	Vehicular access for operational and maintenance access
Golden Lane	The point marked OA-17 on sheet 7 of the access to works plan	Vehicular access for operational and maintenance access
Golden Lane	The point marked CR-5 on sheet 7 of the access to works plan	Vehicular access for construction crossing
Golden Lane	The point marked OA-18 on sheet 7 of the access to works plan	Vehicular access for operational and maintenance access
B1035 (Tendring Road)	The point marked AC-4 on sheet 8 of the access to works plan	Vehicular access for construction access
B1035 (Tendring Road)	The point marked OA-19 on sheet 8 of the access to works plan	Vehicular access for operational and maintenance access
B1035 (Thorpe Road)	The point marked AC-5 on sheet 8 of the access to works plan	Vehicular access for construction access
Swan Lane	The point marked OA-20 on sheet 8 of the access to works plan	Vehicular access for operational and maintenance access
Swan Lane	The point marked OA-21 on sheet 8 of the access to works plan	Vehicular access for operational and maintenance access
Lodge Lane	The point marked CR-6 on sheet 9 of the access to works plan	Vehicular access for construction crossing
Lodge Lane	The point marked OA-22 on sheet 9 of the access to works plan	Vehicular access for operational and maintenance access

Wolves Hall Lane	The point marked OA-23 on sheet 9 of the access to works plan	Vehicular access for operational and maintenance access
Wolves Hall Lane	The point marked OA-24 on sheet 10 of the access to works plan	Vehicular access for operational and maintenance access
Wolves Hall Lane	The point marked OA-25 on sheet 10 of the access to works plan	Vehicular access for operational and maintenance access
Wolves Hall Lane	The point marked CR-7 on sheet 10 of the access to works plan	Vehicular access for construction crossing
Wolves Hall Lane	The point marked OA-26 on sheet 10 of the access to works plan	Vehicular access for operational and maintenance access
Stones Green Road	The point marked CR-8A on sheet 11 of the access to works plan	Vehicular access for construction crossing
Stones Green Road	The point marked CR-8B on sheet 11 of the access to works plan	Vehicular access for construction crossing
Stones Green Road	The point marked OA-27 on sheet 11 of the access to works plan	Vehicular access for operational and maintenance access
Colchester Road	The point marked OA-28 on sheet 11 of the access to works plan	Vehicular access for operational and maintenance access
B1035 (Clacton Road)	The point marked AC-6 on sheet 12 of the access to works plan	Vehicular access for construction access
B1035 (Clacton Road)	The point marked AC-7 on sheet 12 of the access to works plan	Vehicular access for construction access
B1035 (Clacton Road)	The point marked OA-29 on sheet 12 of the access to works plan	Vehicular access for operational and maintenance access
B1035 (Clacton Road)	The point marked AC-8A on sheet 12 of the access to works plan	Vehicular access for construction access
B1035 (Clacton Road)	The point marked AC-8B on sheet 12 of the access to works plan	Vehicular access for construction access
B1035 (Clacton Road)	The point marked OA-30 on sheet 12 of the access to works plan	Vehicular access for operational and maintenance access
Bentley Road	The point marked AC-9 on sheet 13 of the access to works plan	Vehicular access for construction access
Bentley Road	The point marked AC-10 on sheet 13 of the access to works plan	Vehicular access for construction access
Bentley Road	The point marked AC-11 on sheet 13 of the access to works plan	Vehicular access for construction access
Bentley Road	The point marked OA-31 on sheet 13 of the access to works plan	Vehicular access for operational and maintenance

	plan	access
Paynes Lane	The point marked OA-32 on sheet 14 of the access to works plan	Vehicular access for operational and maintenance access
Paynes Lane	The point marked CR-9 on sheet 14 of the access to works plan	Vehicular access for construction crossing
Paynes Lane	The point marked OA-33 on sheet 14 of the access to works plan	Vehicular access for operational and maintenance access
Paynes Lane	The point marked CR-9A on sheet 14 of the access to works plan	Vehicular access for construction crossing
Spratts Lane	The point marked CR-10 on sheet 14 of the access to works plan	Vehicular access for construction crossing
Paynes Lane	The point marked OA-34 on sheet 14 of the access to works plan	Vehicular access for operational and maintenance access
Spratts Lane	The point marked CR-10A on sheet 14 of the access to works plan	Vehicular access for construction crossing
Barlon Road	The point marked OA-35 on sheet 15 of the access to works plan	Vehicular access for operational and maintenance access
Barlon Road	The point marked CR-11 on sheet 15 of the access to works plan	Vehicular access for construction crossing
Barlon Road	The point marked OA-36 on sheet 15 of the access to works plan	Vehicular access for operational and maintenance access
Barlon Road	The point marked CR-11A on sheet 15 of the access to works plan	Vehicular access for construction crossing
Ardleigh Road	The point marked OA-38 on sheet 16 of the access to works plan	Vehicular access for operational and maintenance access
Ardleigh Road	The point marked AC-12 on sheet 16 of the access to works plan	Vehicular access for construction access
Ardleigh Road	The point marked OA-39 on sheet 16 of the access to works plan	Vehicular access for operational and maintenance access
Ardleigh Road	The point marked OA-37 on sheet 16 of the access to works plan	Vehicular access for operational and maintenance access
Ardleigh Road	The point marked AC-13 on sheet 16 of the access to works plan	Vehicular access for construction access

SCHEDULE 5

Article 24

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

(1) <i>Number of plot shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
Intertidal zone 01-001, 01-002	

Rights

Rights for the purposes of the construction, installation, retention, operation, maintenance and decommissioning of the authorised development to—

- (a) lay down, install, retain, adjust, alter, construct, operate, erect, use, maintain, repair, renew, upgrade, inspect, remove and replace the electricity cables (including the removal of materials including spoil) in, under, over and/or on the land, together with such telemetry and fibre-optic lines, ducting, jointing bays and other apparatus, protection measures, cable marker posts, chambers and manholes, manhole covers and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (all collectively referred to as the “cables”), and in doing so, to use or resort to trenchless installation techniques including (but not limited to) directional drilling beneath sea defences and existing infrastructure;
- (b) to benefit from continuous vertical and lateral support for the authorised development;
- (c) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the electrical infrastructure and cables;
- (d) construct and install and thereafter use the land for all necessary purposes for the commissioning, construction, repair, testing and maintenance of the cables in, on or under the land;
- (e) place and use plant, machinery, structures and temporary structures within the land for the purposes of the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the ducting, electrical infrastructure and cables, and to erect temporary signage and provide measures for the benefit of public and personnel safety.

Restrictive covenants

A restrictive covenant over the land for the benefit of the

remainder of the Order land to—

~~(f)~~(a) _____ prevent anything to be done in or upon the land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto);

~~(g)~~(b) _____ prevent anything to be done by way of hard surfacing of the 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 development nor make it materially more difficult or expensive to maintain the authorised development);

~~(h)~~(c) _____ prevent anything to be done by way of excavation of any kind in the land nor any activities which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised development, alter, 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 (being ploughing to no deeper than 0.6m for the purposes of arable farming) or are required to be carried out by National Grid in order to exercise their statutory functions or rights in relation to their apparatus (if any) within the land;

~~(i)~~(d) _____ to prevent anything being done which may interfere with free flow and passage of electricity or telecommunications through the cables or support for the authorised development;

~~(j)~~(e) _____ prevent carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised development.

Landfall and Onshore Connection Works

01-003, 01-004, 01-005, 01-006,
01-007, 01-008, 01-009, 01-010

Rights

Rights for the purposes of the construction, installation, retention, operation, maintenance and decommissioning of the authorised development to—

~~(k)~~(a) _____ lay down, install, retain, adjust, alter, construct, operate, erect, use, maintain, repair, renew, upgrade, inspect, remove and replace the electricity cables (including the removal of materials including spoil) in, under, over and/or on the land, together with such telemetry and fibre-optic lines, ducting, jointing bays and other apparatus, protection measures, cable marker posts, chambers and manholes, manhole covers and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (all

collectively referred to as the “cables”), and in doing so, to use or resort to trenchless installation techniques including (but not limited to) directional drilling beneath sea defences, watercourses and highways;

~~(+)~~(b) _____ enter, be on, and break open and break up the surface of the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of installing, operating and maintaining the cables, transmitting electricity along the cables or use of electrical infrastructure and the cables;

~~(+)~~(c) _____ to benefit from continuous vertical and lateral support for the authorised development;

~~(+)~~(d) _____ pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the electrical infrastructure and cables;

~~(+)~~(e) _____ construct and install and thereafter use the land for all necessary purposes for the commissioning, construction, repair, testing and maintenance of the cables in, on or under the land;

~~(+)~~(f) _____ place and use plant, machinery, structures and temporary structures within the land for the purposes of the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the electrical infrastructure and cables, and to erect temporary signage and provide measures for the benefit of public and personnel safety;

~~(+)~~(g) _____ erect temporary bridges and supporting or protective structures for the purposes of access to adjoining land and highway;

~~(+)~~(h) _____ erect fencing, gates, walls, barriers or other means of enclosure, and create secure working areas and compounds including trenchless installation technique compounds and working areas;

~~(+)~~(i) _____ construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal or decommissioning is being carried out;

~~(+)~~(j) _____ to use, maintain, renew, improve and alter existing accesses, roads, streets, tracks or ways over the land, providing that such use is not exclusive and exercise of this right must not prevent or unreasonably inhibit use by other parties;

~~(+)~~(k) _____ effect access and egress to and from the

highway;

~~(v)~~(l) _____ make such investigations in or on the land as required;

~~(w)~~(m) _____ alter, fell, lop or cut, coppice wood, uproot trees or hedges or shrubs or other vegetation which now or hereafter may be standing on the land or other land which would if not felled, lopped, cut or removed would obstruct or interfere with the operation of the cables and ancillary equipment including ducting;

~~(x)~~(n) _____ to take and use, remove and discharge water from the land, and to lay down, install, retain, use, maintain, inspect, adjust, alter, remove, refurbish, reconstruct, upgrade, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, flues and to drain into and manage waterflows in any drains, watercourses and culverts, install, retain, use, inspect, maintain, adjust, alter, renew, repair, test or cleanse drainage schemes on the land or reinstate the any existing drainage scheme on the land;

~~(y)~~(o) _____ lay down, install, alter, re-lay, maintain, protect, adjust, use or remove pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers and providing connection to the authorised development);

~~(z)~~(p) _____ erect and remove temporary fencing, gates, walls, barriers or other means of enclosure, remove fences and structures within the land during any period during which construction, maintenance, repair or renewal is being carried out (subject to erection of any temporary stock-proof fencing as is reasonably required and the re-instatement or suitable replacement of the fences or structures following the end of each period of exercise of the rights);

~~(aa)~~(q) _____ store and stockpile materials (including excavated material);

~~(bb)~~(r) _____ create boreholes and trial excavation pits for the purposes of intrusively surveying the land and monitoring the use of any trenchless installation technique, to keep in place and monitor the same through construction, maintenance repair, replacement or decommissioning and to reinstate the land;

~~(cc)~~(s) _____ to excavate materials below ground level, including soils, and to store and re-use or dispose of the same, and in so excavating to undertake any works, including works of protection or removal of archaeological remains as may be required by any

written scheme of investigation approved under this Order;

~~(dd)~~(t) _____ lay out and maintain temporary paths and bridleways for public use as temporary diversions for public rights of way which are interfered with during any period in which construction, maintenance, repair or renewal decommissioning is being carried out;

~~(ee)~~(u) _____ to install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, remediation works for environmental or ecological mitigation or enhancement works, including temporary works for noise alleviation measures and the installation of temporary barriers for the protection of fauna;

~~(ff)~~(v) _____ carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the land and/or in accordance with any necessary licences relating to protected species and/or wildlife; and

~~(gg)~~(w) _____ (in an emergency only when the cables are temporarily unusable) to lay down, install, use, maintain and inspect underground cables, telephone signalling and fibre-optic cables and ancillary equipment, associated works and other conducting media together with conduits or pipes for containing the same in and under the land.

Restrictive covenants

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

~~(hh)~~(a) _____ prevent anything to be done in or upon the land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto);

~~(ii)~~(b) _____ prevent anything to be done by way of hard surfacing of the 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 development nor make it materially more difficult or expensive to maintain the authorised development);

~~(jj)~~(c) _____ to prevent anything to be done by way of excavation of any kind in the land nor any activities which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised development, alter, 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

(being ploughing to no deeper than 0.6m for the purposes of arable farming) or are required to be carried out by National Grid in order to exercise their statutory functions or rights in relation to their apparatus (if any) within the land;

~~(dd)~~(d) _____ to prevent the planting or growing within the 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 development nor make it materially more difficult or expensive to access the relevant part of the authorised development);

~~(ee)~~(e) _____ to prevent anything being done which may interfere with free flow and passage of electricity or telecommunications through the cables or support for the authorised development;

~~(ff)~~(f) _____ to prevent carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised development; and

~~(gg)~~(g) _____ to prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of ecological mitigation areas or areas of habitat creation or reinstatement including any ploughing or grazing without the prior written consent of the undertaker.

Cable Route Onshore

01-010, 01-012, 01-013, 01-016,
02-001, 02-002, 02-006, 02-009,
02-015, 02-016, 03-004, 03-005,
03-008, 03-009, 03-023, 03-024,
04-006, 04-007, 04-009, 04-010,
04-011, 04-016, 04-022, 05-005,
05-008, 05-009, 05-010, 05-016,
05-017, 05-018, 05-024, 05-026,
06-002, 06-014, 06-017, 06-018,
06-019, 06-020, 07-001, 07-003,
07-007, 07-009, 07-010, 07-011,
07-012, 08-005, 08-006, 08-007,
08-009, 08-011, 08-012, 08-013,
08-014, 08-020, 08-021, 08-022,
09-005, 09-007, 09-008, 09-012,
10-003, 10-006, 10-007, 10-009,
10-019, 10-020, 11-004, 11-005,
12-005, 12-006, 12-010, 12-011,
12-012, 12-020, 12-021, 13-001,
13-002, 13-027, 13-028, 13-046,
13-052, 13-053, 13-054, 13-055,
13-056, 13-057, 13-061, 14-003,
14-004, 14-007, 14-008, 14-009,
14-015, 14-016, 14-017, 14-021,
14-022, 15-001, 15-003, 15-004,

Rights

Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—

~~(ee)~~(a) _____ lay down, install, retain, adjust, alter, construct, operate, erect, use, maintain, repair, renew, upgrade, inspect, remove and replace the electricity cables (including the removal of materials including spoil) in, under, over and/or on the land together with such telemetry and fibre-optic lines, ducting, jointing bays and other apparatus, protection measures, cable marker posts, chambers and manholes, manhole covers and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (all collectively referred to as the “cables”), and in doing so, to use or resort to trenchless installation techniques including (but not limited to) directional drilling beneath watercourses, highways and railways;

~~(ff)~~(b) _____ lay down, install, retain, adjust, alter, construct, operate, erect, use, maintain, repair, renew, upgrade, inspect, remove and replace the

additional ducts for electricity cables (including the removal of materials including spoil) in, under, over and/or on the land, allow the installation and use of electrical cables in the additional ducts, together with such telemetry and fibre-optic lines, ducting, jointing bays and other apparatus, protection measures, cable marker posts, chambers and manholes, manhole covers and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (all collectively referred to as the “cables”), and in doing so, to use or resort to trenchless installation techniques including (but not limited to) directional drilling beneath watercourses, highways and railways;

~~(cc)~~(c) _____ enter, be on, and break open and break up the surface of the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of installing, operating and maintaining the cables or additional ducts, transmitting electricity along the cables, or use of electrical infrastructure and the cables;

~~(tt)~~(d) _____ to benefit from continuous vertical and lateral support for the authorised development;

~~(ss)~~(e) _____ pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the electrical infrastructure and cables and additional ducts;

~~(tt)~~(f) _____ construct and install and thereafter use the land for all necessary purposes for the commissioning, construction, repair, testing and maintenance of the cables and additional ducts in, on or under the land;

~~(uu)~~(g) _____ place and use plant, machinery, structures and temporary structures within the land for the purposes of the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the electrical infrastructure and cables and additional ducts, and to erect temporary signage and provide measures for the benefit of public and personnel safety;

~~(vv)~~(h) _____ erect temporary bridges and supporting or protective structures for the purposes of access to adjoining land and highway;

~~(ww)~~(i) _____ erect fencing, gates, walls, barriers or other means of enclosure, and create secure working areas and compounds including trenchless installation technique compounds and working areas;

~~(xx)~~(j) _____ construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting

or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal or decommissioning is being carried out;

~~(yy)~~(k) _____ to use, maintain, renew improve and alter existing accesses, roads, streets, tracks or ways over the land, providing that such use is not exclusive and exercise of this right must not prevent or unreasonably inhibit use by other parties;

~~(zz)~~(l) _____ effect access and egress to and from the highway;

~~(aaa)~~(m) _____ make such investigations in or on the land as required;

~~(bbb)~~(n) _____ alter, fell, lop or cut, coppice or replant wood, uproot trees or hedges or shrubs or other vegetation which now or hereafter may be standing on the land or other land which would if not felled, lopped, cut or removed would obstruct or interfere with the operation of the cables and ancillary equipment including ducting;

~~(eee)~~(o) _____ to take and use, remove and discharge water from the land, and to lay down, install, retain, use, maintain, inspect, adjust, alter, remove, refurbish, reconstruct, upgrade, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, flues and to drain into and manage waterflows in any drains, watercourses and culverts, install, retain, use, inspect, maintain, adjust, alter, renew, repair, test or cleanse drainage schemes on the land or reinstate the any existing drainage scheme on the land;

~~(ddd)~~(p) _____ lay down, install, alter, re-lay, maintain, protect, adjust, use or remove pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus, public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers and providing connection to the authorised development);

~~(eee)~~(q) _____ erect and remove temporary fencing, gates, walls, barriers or other means of enclosure, remove fences and structures within the land during any period during which construction, maintenance, repair or renewal is being carried out (subject to erection of any temporary stock-proof fencing as is reasonably required and the re-instatement or suitable replacement of the fences or structures following the end of each period of exercise of the rights);

~~(fff)~~(r) _____ store and stockpile materials (including excavated material);

~~(ggg)~~(s) _____ create boreholes and trial excavation pits for

the purposes of intrusively surveying the land and monitoring the use of any trenchless installation technique, to keep in place and monitor the same through construction, maintenance repair, replacement or decommissioning and to reinstate the land;

~~(hhh)~~(t) to excavate materials below ground level, including soils, and to store and re-use or dispose of the same, and in so excavating to undertake any works, including works of protection or removal of archaeological remains as may be required by any written scheme of investigation approved under this Order;

~~(iii)~~(u) lay out and maintain temporary paths and bridleways for public use as temporary diversions for public rights of way which are interfered with during any period in which construction, maintenance, repair or renewal decommissioning is being carried out;

~~(iii)~~(v) to install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, remediation works for environmental or ecological mitigation or enhancement works, including temporary works for noise alleviation measures and the installation of temporary barriers for the protection of fauna;

~~(kkk)~~(w) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the land and/or in accordance with any necessary licences relating to protected species and/or wildlife; and

~~(iii)~~(x) (in an emergency only when the cables are temporarily unusable) to lay down, install, use, maintain and inspect underground cables, telephone signalling and fibre-optic cables and ancillary equipment, associated works and other conducting media together with conduits or pipes for containing the same in and under the land.

Restrictive covenants

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

~~(mmmm)~~(a) prevent anything to be done in or upon the land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto);

~~(mmmm)~~(b) prevent anything to be done by way of hard surfacing of the 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 development nor make it materially more difficult or expensive to maintain the authorised development);

~~(eee)~~(c) to prevent anything to be done by way of excavation of any kind in the land nor any activities which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised development, alter, 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 (being ploughing to no deeper than 0.6m for the purposes of arable farming) or are required to be carried out by National Grid in order to exercise their statutory functions or rights in relation to their apparatus (if any) within the land;

~~(ppp)~~(d) to prevent the planting or growing within the 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 development nor make it materially more difficult or expensive to access the relevant part of the authorised development);

~~(qqq)~~(e) to prevent anything being done which may interfere with free flow and passage of electricity or telecommunications through the cables or support for the authorised development;

~~(rrr)~~(f) to prevent carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised development; and

~~(sss)~~(g) to prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of ecological mitigation areas or areas of habitat creation or reinstatement including any ploughing or grazing without the prior written consent of the undertaker.

Operational and Maintenance Access

01-011, 01-015, 02-004, 02-012,
02-017, 02-018, 02-019, 02-020,
03-001, 03-016, 03-017, 03-020,
03-021, 03-022, 04-002, 04-003,
04-004, 04-005, 04-012, 04-013,
04-014, 04-015, 04-017, 04-018,
05-022, 05-027, 06-001, 06-003,
06-007, 06-012, 07-004, 08-002,
08-010, 08-015, 08-023, 08-024,
09-003, 09-006, 09-009, 09-010,
09-011, 10-008, 10-013, 11-001,
12-014, 13-032, 13-033

Rights

Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—

~~(ttt)~~(a) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of the authorised development, the inspection, use, testing, maintenance, renewal, repair, upgrading, replacement and removal of the cables and connection into any adjacent cables and associated works, to take plant and equipment on to adjoining

land and make such investigations in or on the land which is ancillary for the purposes of exercise of the rights;

~~(uuu)~~(b) to construct, use, maintain and improve a permanent means of access including visibility splays, and retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing the land, adjoining land and highway;

~~(vvv)~~(c) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;

~~(www)~~(d) construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair, renewal or decommissioning is being carried out;

~~(xxx)~~(e) erect temporary bridges and supporting or protective structures for the purposes of access to adjoining land;

~~(yyy)~~(f) place and use plant, machinery, structures and temporary structures within the land, and to erect temporary signage and provide measures for the benefit of public and personnel safety;

~~(zzz)~~(g) alter, fell, lop, cut, coppice wood, uproot trees or hedges or shrubs or other vegetation which now or hereafter may be present on the land for the purpose of enabling the right to pass and re-pass to adjoining land;

~~(aaa)~~(h) repair, improve, renew, remove, relocate and plant trees, woodland, shrubs, hedgerows, seeding and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs and landscaping;

~~(bbb)~~(i) erect and remove temporary fencing, gates, walls, barriers or other means of enclosure; and

~~(eee)~~(j) lay out and maintain temporary paths and bridleways for public use as temporary diversions for public rights of way which are interfered with during any period in which construction, maintenance, repair or renewal decommissioning is being carried out.

Restrictive covenants

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

~~(ddd)~~(a) prevent anything to be done in or upon the Land or any part thereof for the purpose of the erection of any buildings or construction erection or

works of any kind (including the foundations footings or other supporting structures thereto); and

~~(eeee)~~(b) prevent the planting or growing within the 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 development nor make it materially more difficult or expensive to access the relevant part of the authorised development).

Substation Drainage

15-002, 15-012, 15-013, 15-015

Rights

Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—

~~(ffff)~~(a) remove and discharge water from the land and to lay down, install, retain, use, maintain, inspect, adjust, alter, remove, refurbish, reconstruct, upgrade, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, flues and to drain into and manage waterflows in any drains, watercourses and culverts, to lay down, install, adjust, alter, construct, create, use, maintain, repair, renew, upgrade, inspect, remove and replace a drainage scheme on the land (the “drainage works”);

~~(gggg)~~(b) inspect, use mechanical excavation (including directional drilling and/or digging), reinstate, remove, move or alter such part or parts of any drainage system on the land for the purposes of the drainage works (including connecting the drainage works to any land drain as at the date of the drainage works);

~~(hhhh)~~(c) enter, be on, and break up the surface of the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of the drainage works;

~~(iiii)~~(d) store and stockpile materials (including excavated material);

~~(jjjj)~~(e) make such investigations in or on the land as required for the purposes of the drainage works, include to create boreholes and trial excavation pits for the purposes of intrusively surveying the land;

~~(kkkk)~~(f) to excavate materials below ground level, including soils, and to store and re-use or dispose of the same, and in so excavating, to undertake any works, including works of protection or removal of archaeological remains as may be required by any written scheme of investigation approved under this Order;

~~(llll)~~(g) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of the drainage works;

~~(mmmm)~~(h) place and use plant, machinery, structures and temporary structures within the land, and to erect temporary signage and provide measures for the benefit of public and personnel safety for the purposes of the drainage works;

~~(nnnn)~~(i) erect fencing, gates, walls, barriers or other means of enclosure, and create secure works areas or compounds and working areas for the purposes of the drainage works;

~~(oooo)~~(j) construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal of any drainage work is being carried out;

~~(pppp)~~(k) effect access and egress to and from the highway;

~~(qqqq)~~(l) alter, fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the land or other land which would if not felled, lopped, cut or removed obstruct or interfere with the drainage works;

~~(rrrr)~~(m) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers);

~~(ssss)~~(n) to install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, remediation works for environmental or ecological mitigation or enhancement works, including temporary works for noise alleviation measures and the installation of temporary barriers for the protection of fauna; and

~~(tttt)~~(o) to carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the land in accordance with any necessary licences relating to protected species and/or wildlife.

Restrictive covenants

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

~~(uuuu)~~(a) prevent anything to be done in or upon the land or any part thereof for the purpose of the erection of any buildings or construction erection or

works of any kind (including the foundations or footings thereto); and

~~(vvvv)~~(b) prevent anything to be done by way of hard surfacing of the 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 drainage works).

National Grid Substation Works

15-015, 16-002, 16-003, 16-004,
16-005, 16-006, 16-007, 16-008

Rights

Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—

~~(wwww)~~(a) lay down, install, retain, adjust, alter, construct, operate, erect, use, maintain, repair, renew, upgrade, inspect, remove and replace the electricity cables (including the removal of materials including spoil) in, under, over and/or on the land, together with such telemetry and fibre-optic lines, ducting, jointing bays and other apparatus, protection measures, cable marker posts, chambers and manholes, manhole covers and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (all collectively referred to as the “cables”);

~~(xxxx)~~(b) enter, be on, and break open and break up the surface of the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables;

~~(yyyy)~~(c) to benefit from continuous vertical and lateral support for the authorised development;

~~(zzzz)~~(d) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting the authorised development and for removing and replacing the cables;

~~(aaaa)~~(e) to use, maintain, renew improve and alter existing accesses, roads, streets, tracks or ways over the land, providing that such use is not exclusive and exercise of this right must not prevent or unreasonably inhibit use by other parties;

~~(bbbb)~~(f) construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair, renewal or decommissioning is being carried

out;

~~(eeee)~~(g) place and use plant, machinery, structures and temporary structures within the land, and to erect temporary signage and provide measures for the benefit of public and personnel safety;

~~(dddd)~~(h) fell, lop, cut, coppice wood, uproot trees or hedges or shrubs or other vegetation which now or hereafter may be present on the land for the purpose of enabling the right to pass and re-pass to adjoining land;

~~(eeee)~~(i) to take and use, remove and discharge water from the land and to lay down, install, retain, use, maintain, inspect, adjust, alter, remove, refurbish, reconstruct, upgrade, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, flues and to drain into and manage waterflows in any drains, watercourses and culverts, to lay down, install, retain, adjust, alter, construct, create, use, maintain, repair, renew, upgrade, inspect, remove and replace a drainage scheme on the land;

~~(ffff)~~(j) lay down, install, alter, re-lay, maintain, protect, adjust, use or remove pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers); and

~~(gggg)~~(k) effect access and egress to and from the highway.

Restrictive covenants

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

~~(hhhh)~~(a) prevent anything to be done in or upon the land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto) without the prior written consent of the undertaker;

~~(iiii)~~(b) to prevent the planting or growing within the 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 development nor make it materially more difficult or expensive to access the relevant part of the authorised development);

~~(jjjj)~~(c) to prevent anything being done which may interfere with free flow and passage of electricity or telecommunications through the cables or support

for the authorised development;

~~(d)~~ (d) to prevent carrying out operations or actions
(including but not limited to blasting and piling)
which may obstruct, interrupt or interfere with the
exercise of the rights or damage the authorised
development.

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

~~87.1.~~ 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 imposition of a restrictive covenant as they apply as respects compensation for the compulsory purchase of land and interests in land.

~~88.2.~~—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the following modification—

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

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the Compulsory Purchase Act 1965 (as modified by paragraph 5(5) of Schedule 6 to the North Falls Offshore Wind Farm Order 202[]).
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the Compulsory Purchase Act 1965 (as substituted by paragraph 5(8) of Schedule 6 to the North Falls Offshore Wind Farm Order 202[]) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land, the authority is deemed for the purposes of sub-section (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”.

~~89.3.~~—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3) of this Schedule—

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

Application of Part 1 of the 1965 Act

~~90.4.~~—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 29 (modification of Part 1 of the 1965 Act) to the acquisition of land under article 21 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 24 (compulsory acquisition of rights etc.)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

(a) 1973 c. 26.

91.5.—(1) The modifications referred to in paragraph 4 are set out in the following provisions of this Schedule.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

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

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

“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.”.

(4) 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 (persons without power to sell their interests) (conveyance of the land or interest);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land);

are modified so 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.

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

(6) Section 20 (tenants at will, etc.) of the 1965 Act 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.

(7) Section 22 (interests omitted from purchase) of the 1965 Act is modified so 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.

(8) For Schedule 2A of the 1965 Act substitute—

(a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).
(b) Section 11B was inserted by section 187(2) of the above Act.

COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the 1981 Act) of the North Falls Offshore Wind Farm Order 202[] in respect of the land to which the notice to treat relates.

(2) But see article 28 (acquisition of subsoil only) of the North Falls Offshore Wind Farm Order 202[] which excludes the acquisition of subsoil only from this Schedule.

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

Counter-notice requiring purchase of land

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

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

Response to counter-notice

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

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

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

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

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

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

Determination by the Upper Tribunal

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

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

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

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

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

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

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

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

15. Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 7

Article 31

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Number of plot shown on land plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
01-014	Temporary use as a construction working area and for access to facilitate construction of the authorised development at landfall	Work No. 5
02-003, 02-005, 02-007, 02-008, 02-011, 02-013, 02-014, 05-001, 07-014, 08-001, 08-003, 08-004, 08-016, 08-017, 11-002, 12-007, 12-017, 12-018, 12-019, 13-024, 13-025, 13-026, 13-030, 13-035, 13-037, 13-039, 13-040, 13-041, 13-042, 13-043, 13-044, 13-045	Temporary use as a construction working area and for access to facilitate construction of the authorised development	Work No. 7
02-003, 02-005, 02-007, 02-008, 02-010, 02-011, 02-013, 02-014, 03-002, 03-003, 03-006, 03-007, 03-010, 03-011, 03-012, 03-013, 03-014, 03-015, 03-018, 03-019, 03-025, 04-001, 04-008, 04-019, 04-020, 04-021, 05-001, 05-002, 05-003, 05-004, 05-006, 05-007, 05-011, 05-012, 05-013, 05-014, 05-015, 05-019, 05-020, 05-021, 05-023, 05-025, 06-004, 06-005, 06-006, 06-008, 06-009, 06-010, 06-011, 06-013, 06-015, 06-016, 07-002, 07-005, 07-006, 07-008, 07-013, 07-014, 08-001, 08-003, 08-004, 08-008, 08-018, 08-019, 08-025, 09-001, 09-002, 09-004, 10-001, 10-002, 10-004, 10-005, 10-010, 10-011, 10-012, 10-014, 10-015, 10-016, 10-017, 10-018, 11-002, 11-003, 12-001, 12-002, 12-003, 12-004, 12-007, 12-008, 12-009, 12-013, 12-015, 12-016, 12-017, 12-018, 13-024, 13-025, 13-026, 13-039, 13-040, 13-041, 13-042, 13-043, 13-044, 13-045, 13-047, 13-048, 13-049, 13-050, 13-051, 13-058, 13-059, 13-060,	Temporary use as access to facilitate construction of the authorised development	Work No. 8

14-001, 14-002, 14-005, 14-006, 14-010, 14-011, 14-012, 14-013, 14-014, 14-018, 14-019, 14-020, 15-006, 15-007, 15-008, 15-009

13-004, 13-005, 13-006, 13-007, 13-008, 13-009, 13-010, 13-011, 13-012, 13-019, 13-022, 13-025, 13-026, 13-039, 13-040, 13-043, 13-044

Temporary use as access and road widening to facilitate construction of the authorised development

Work No. 9

SCHEDULE 8

Article 36

DEEMED MARINE LICENCE UNDER THE 2009 ACT – GENERATION ASSETS

PART 1

LICENSED MARINE ACTIVITIES

~~92-1~~1—(1) In this licence—

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

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

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

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

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

“authorised development” means Work No. 1 described in paragraph 3 of this licence or any stage of that work;

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

“cable circuits” means a number of electrical conductors necessary to transmit electricity between two points, comprising one or more conductors which may be bundled as one cable or take the form of separate cables, and in either case the circuit may include one or more auxiliary cables for the purpose of control, monitoring, protection or general communication;

“cable crossings” means a crossing of existing cables, pipelines or other existing infrastructure by cable circuits authorised by this Order together with cable protection;

“cable protection” means physical measures for the protection of cables including but not limited to concrete mattresses, split pipe system, and/or rock placement (including material used for cable crossings);

“cable protection replenishment” means the restoration to a former level or condition of cable protection lost by natural seabed processes or human activity;

“commence” means the first carrying out of any licensed marine activities authorised by this marine licence, save for pre-construction surveys and monitoring approved under this marine licence and the activities set out in paragraph 2(d)~~“buoy” means any floating device used for navigational purposes or measurement purposes, including LIDAR buoys, wave buoys and guard buoys;~~

~~“cable circuits” means a number of electrical conductors necessary to transmit electricity between two points, comprising one or more conductors which may be bundled as one cable or take the form of separate cables, and in either case the circuit may include one or more auxiliary cables for the purpose of control, monitoring, protection or general communication;~~

~~“cable crossings” means a crossing of existing cables, pipelines or other existing infrastructure by cable circuits authorised by this Order together with cable protection;~~

-
- (a) 2004 c. 20.
(b) 2008 c. 29.
(c) 2009 c. 23.
(d) S.I. 2017/13.

~~“cable protection” means physical measures for the protection of cables including but not limited to concrete mattresses, split pipe system, and/or rock placement (including material used for cable crossings);~~

~~“cable protection replenishment” means the restoration to a former level or condition of cable protection lost by natural seabed processes or human activity;~~

~~“commence” means the first carrying out of any licensed marine activities authorised by this marine licence, save for pre construction surveys and monitoring approved under this marine licence and the activities set out in paragraph , and “commenced” and “commencement” must be construed accordingly;~~

“commissioning” means the process of assuring that all systems and components of the authorised development are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker;

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

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation – Safeguarding, St George’s House, DIO Head Office, DMS Whittington, Lichfield, Staffordshire, WS14 9PY and any successor body to its functions;

“Defra” means the Department for Environment, Food and Rural Affairs;

“dropped object procedure form” means the MMO notification proforma with reference MLDIR1 for reporting the loss or dumping of synthetic materials and other refuse at sea or any other format advised in writing by the MMO;

~~“commissioning” means the process of assuring that all systems and components of the authorised development are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker;~~

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

~~“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation – Safeguarding, St George’s House, DIO Head Office, DMS Whittington, Lichfield, Staffordshire, WS14 9PY and any successor body to its functions;~~

~~“Defra” means the Department for Environment, Food and Rural Affairs;~~

~~“dropped object procedure form” means the MMO notification proforma with reference MLDIR1 for reporting the loss or dumping of synthetic materials and other refuse at sea or any other format advised in writing by the MMO;~~

“emergency response co-operation plan” means the plan approved by the MCA containing the arrangements for liaison between the undertaker and HM Coastguard in the event of an emergency response;

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

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order under article 41 (certification of plans and documents, etc.);

“habitats of principal importance” means a habitat designated as being of principal importance in accordance with section 41 (biodiversity lists and action (England)) of the Natural Environment and Rural Communities Act 2006(a);

“IHO S44ed5 Order 1a” means order 1a from the fifth edition of the International Hydrographic Organisation’s Standards for Hydrographic Surveys as updated or amended from time to time;

(a) 2006 c. 16.

“jacket foundation” means a lattice type structure constructed of steel, and additional equipment such as J-tubes, corrosion protection systems and access platforms attached to the seabed;

“JNCC” means the Joint Nature Conservation Committee;

“Kingfisher 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;

“Kingfisher Information Service” means the information service from non-departmental government body Seafish;

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

“lighting and marking plan” means the lighting and marking plan to be submitted to the MMO under condition 21 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace (including replenishment of cable protection) to the extent assessed in the environmental statement, and “maintenance” must be construed accordingly;

“Marine Management Organisation” or “MMO” means the Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH who is the body created under the 2009 Act and who is responsible for the monitoring and enforcement of this licence;

“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;

“MCA” means the Maritime and Coastguard Agency, ~~an executive agency of the Department for Transport;~~

“MGN654” means “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes, as may be updated or amended from time to time;

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

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

~~“monopile gravity base structures” means a structure principally of steel, concrete, or steel and concrete with a base which tapers as it rises which rests on the seabed due to its own weight with or without added ballast or additional skirts and associated equipment including J-tubes (or equivalent structures), corrosion protection systems and access platform(s) and equipment;~~

“offshore converter platform” means a structure, authorised by the deemed marine licence in Schedule 10 to the Order, above MHWS and attached to the seabed by means of a foundation, with equipment to convert three-phase HVAC power generated by the wind turbine generations into HVDC power;

“the offshore Order limits plan” means the plan certified as the offshore Order limits plan by the Secretary of State for the purposes of the Order under article 41 (certification of plans and documents, etc.);

“offshore platform” means the offshore substation platform(s) and/or the offshore converter platform;

“Offshore Renewables Protocol for Reporting Archaeological Discoveries” means the Offshore Renewables Protocol for Reporting Archaeological Discoveries, the Crown Estate (2014), Protocol for Archaeological Discoveries: Offshore Renewables Projects, Salisbury, Wessex Archaeology as amended, updated or superseded from time to time;

“offshore substation platform” means a structure, authorised by the deemed marine licence in Schedule 9 to the Order, above MHWS and attached to the seabed by means of a foundation, with one or more decks, whether open or fully clad, accommodating electrical power transformers, switchgear, instrumentation, protection and control systems, 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;

“operation” means the undertaking of the licensed activities which are not part of the construction, commissioning or decommissioning of the authorised development;

“Order” means the North Falls Offshore Wind Farm Order 202[];

“the Order limits” means the limits shown on the works plans within which the authorised development may be carried out, the grid coordinates for the area seaward of MHWS are set out in paragraph 5 of Part 1 of this licence;

“outline fisheries liaison and co-existence plan” means the document certified as the outline fisheries liaison and co-existence plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline marine mammal mitigation protocol” means the document certified as the outline marine mammal mitigation protocol by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

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

“outline offshore in-principle monitoring plan” means the document certified as the outline offshore in-principle monitoring plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline offshore written scheme of investigation” means the document certified as the outline offshore written scheme of investigation by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline project environmental management plan” means the document certified as the outline project environmental management plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline site integrity plan for the southern north sea special area of conservation” means the document certified as the outline site integrity plan for the southern north sea special area of conservation by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline vessel traffic monitoring plan” means the document certified as the outline vessel traffic monitoring plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc);

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

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

“SNCB” means the statutory nature conservation body, being the appropriate nature conservation body as defined in Regulation 5 of the Conservation of Habitats and Species Regulations 2017(a) or its equivalent in the 2017 Regulations;

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

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

(a) S.I. 2017/1012.

“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;

“UK Standard Marking Schedule for Offshore Installations” means the Standard Marking Schedule for Offshore Installations published by the Department of Energy & Climate Change with reference DECC 04/11.

“undertaker” means, [subject to article 5 \(benefit of the Order\)](#), North Falls Offshore Wind Farm Limited (company number 12435947) ~~and having its registered address at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, United Kingdom, SN5 6PB;~~;

“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) (or equivalent structures), 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, and radar equipment, fixed to a foundation or transition piece;

“Work No. 1” has the meaning given in paragraph 3 of this licence and includes the further associated development listed;

“Work No. 2” has the same meaning as in Part 1 of Schedule 1 to the Order;

“working day” means a day which is not a weekend, bank holiday or public holiday in England; and

“works plans (offshore)” means the plan or plans certified as the works plans (offshore) by the Secretary of State for the purposes of the Order under article 41 (certification of plans and documents, etc.).

(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;
- (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) Civil Aviation Authority

Aviation House
Beehive Ring Road
Crawley
West Sussex
RH6 0YR

- (b) Historic England

East of England Regional Office
Brooklands
24 Brooklands Avenue
Cambridge
CB2 8BU

- (c) Marine Management Organisation
Marine Licensing Team
Lancaster House Hampshire Court
Newcastle Business Park
Newcastle upon Tyne
NE4 7YH
Tel: 0300 123 1032;
- (d) Marine Management Organisation (Local Office)
[Pakefield Road](#)
[Lowestoft](#)
[NR33 0HT](#)
[Tel: 0208 026 0654](#)
- (e) Maritime and Coastguard Agency
Navigation Safety Branch
Bay 2/20, Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 020 3817 2433;
- (f) Ministry of Defence (as represented by Defence Infrastructure Organisation – Safeguarding)
St George’s House
153
DIO Head Office
DMS Whittington
Lichfield
Staffordshire
WS14 9PY;
- (g) Natural England
Guildbourne House
Chatsworth Road
Worthing
BN11 1LD
Tel: 0300 060 4911;
- (h) Trinity House
Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;
- (i) The United Kingdom Hydrographic Office
Admiralty Way
Taunton
Somerset

TA1 2DN

Tel: 01823 337 900.

(5) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is marine.consents@marinemanagement.org.uk, or where contact to the Local Office if the MMO is required, harwich@marinemanagement.org.uk.

(6) Unless otherwise advised in writing by the MMO, the Marine Case Management System ("MCMS") must be used for all licence returns or applications to vary this licence. The MCMS address is: <https://marinelicensing.marinemanagement.org.uk/>.

Details of licensed marine activities

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

- (a) the deposit at sea within the Order limits seaward of MHWS of the substances and articles specified in paragraph 4 [below and within Work No. 1](#) of up to 28,389,923 cubic metres (being a maximum, not an approximate upper figure) of inert material of natural origin produced during construction drilling or seabed preparation for foundation works and cable installation preparation works;
- (b) the construction of works in or over the sea and/or on or under the seabed;
- (c) dredging for the purposes of seabed preparation for foundation works, preparation for construction vessels and/or electrical circuit works;
- (d) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation;
- (e) boulder clearance works by displacement ploughing or subsea grab technique or any other comparable method;
- (f) removal of static fishing equipment;
- (g) wet storage; and
- (h) site preparation works.

~~Miranda House~~

~~The Quay~~

~~Harwich~~

~~CO12 3HH~~

~~(e)(a) [Maritime and Coastguard Agency](#)~~

~~Navigation Safety Branch~~

~~Bay 2/20, Spring Place~~

~~105 Commercial Road~~

~~Southampton~~

~~SO15 1EG~~

~~Tel: 020 3817 2433;~~

~~(f)(a) [Ministry of Defence \(as represented by Defence Infrastructure Organisation Safeguarding\)](#)~~

~~St George's House~~

~~153~~

~~DIO Head Office~~

~~DMS Whittington~~

~~Lichfield~~

~~Staffordshire~~

~~WS14 9PY;~~

~~(g)(a) Natural England~~

~~Guildbourne House~~

~~Chatsworth Road~~

~~Worthing~~

~~BN11 1LD~~

~~Tel: 0300 060 4911;~~

~~(h)(a) Trinity House~~

~~Tower Hill~~

~~London~~

~~EC3N 4DH~~

~~Tel: 020 7481 6900;~~

~~(i)(a) The United Kingdom Hydrographic Office~~

~~Admiralty Way~~

~~Taunton~~

~~Somerset~~

~~TA1 2DN~~

~~Tel: 01823 337 900;~~

~~(5)(1) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is marine.consents@marinemanagement.org.uk, or where contact to the Local Office if the MMO is required, harwich@marinemanagement.org.uk.~~

~~(6)(1) Unless otherwise advised in writing by the MMO, the Marine Case Management System ("MCMS") must be used for all licence returns or applications to vary this licence. The MCMS address is: <https://marinelicensing.marinemanagement.org.uk/>.~~

Details of licensed marine activities

~~93.1 Subject to the licence conditions in Part 2, this licence authorises the undertaker (and any agent or contractor acting on its behalf) to carry out the following licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act —~~

~~(a) the deposit at sea within the Order limits seaward of MHWS of the substances and articles specified in paragraph ~~below and within Work No. 1~~ of up to 28,389,923 cubic metres (being a maximum, not an approximate upper figure) of inert material of natural origin produced during construction drilling or seabed preparation for foundation works and cable installation preparation works;~~

~~(b)(a) the construction of works in or over the sea and/or on or under the seabed;~~

~~(c)(a) dredging for the purposes of seabed preparation for foundation works, preparation for construction vessels and/or electrical circuit works;~~

~~(d)(a) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre construction, construction and operation;~~

~~(e)(a) boulder clearance works by displacement ploughing or subsea grab technique or any other comparable method;~~

~~(f)(a) removal of static fishing equipment;~~

~~(g)(a) wet storage; and~~

~~(h)(a) site preparation works.~~

3. Such activities described in paragraph 2 are authorised in relation to the construction, maintenance and operation of —

Work No. 1—

~~94.1~~ an offshore wind turbine generating station with a gross electrical output capacity of over 100 megawatts comprising up to 57 wind turbine generators each fixed to the seabed by one of the following foundation types: monopile, mono suction bucket, ~~are authorised in relation to the construction, maintenance and operation of~~

~~Work No. 1—~~

~~(a) an offshore wind turbine generating station with a gross electrical output capacity of over 100 megawatts comprising up to 57 wind turbine generators each fixed to the seabed by one of the following foundation types: monopile, mono suction bucket, gravity base system, multi-leg pin pile jacket, multi-leg suction bucket jacket or multi-leg gravity base system jacket;~~

(a) multi-leg pin pile jacket or multi-leg suction bucket jacket;

(b) a network of cables between the wind turbine generators and between the wind turbine generators and Work No. 2 (as defined in Schedule 1 to the Order), including one or more cable crossings;

In connection with Work No. 1 and to the extent that they do not otherwise form part of that work, further associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence including—

~~(e)~~(a) scour protection around the foundations of the offshore structures;

~~(f)~~(b) cable protection measures such as the placement of rock and/or concrete mattresses;

~~(e)~~(c) the removal of material from the seabed required for the construction of Work No. 1; and

~~(f)~~(d) temporary landing places, moorings or other means of accommodating or anchoring vessels in the construction and/or maintenance of the authorised development and buoys.

~~95.4~~ The substances or articles authorised for deposit at sea are—

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

~~96.5~~ The grid coordinates for that part of the authorised development comprising Work No. 1 are specified below and more particularly on the offshore Order limits and grid coordinates plan—

(1) Point ID	(2) Latitude (WGS84 (DDM))	(3) Longitude (WGS84 (DDM))
36	51° 46.18399'N	01° 51.52207'E
37	51° 46.45215'N	01° 51.46739'E
38	51° 47.79417'N	01° 56.0602'E

39	51° 45.96006'N	01° 54.98406'E
40	51° 44.20008'N	01° 56.16270'E
41	51° 43.43466'N	01° 58.08954'E
42	51° 44.92260'N	02° 02.79174'E
43	51° 44.20590'N	02° 02.65992'E
44	51° 44.16756'N	02° 02.36766'E
45	51° 43.89822'N	02° 01.62702'E
46	51° 43.70418'N	02° 01.18500'E
47	51° 43.46172'N	02° 00.54066'E
48	51° 42.90816'N	01° 59.73738'E
49	51° 42.25464'N	01° 58.18482'E
50	51° 41.80842'N	01° 58.22082'E
51	51° 38.66118'N	01° 54.67986'E
52	51° 37.76189'N	01° 52.32853'E
53	51° 39.03140'N	01° 52.10085'E
54	51° 40.08359'N	01° 52.71647'E
55	51° 40.32461'N	01° 52.55921'E
56	51° 40.41888'N	01° 52.66356'E
57	51° 40.36970'N	01° 52.53295'E
58	51° 40.36967'N	01° 52.52982'E
59	51° 40.80925'N	01° 52.24298'E
60	51° 41.18441'N	01° 51.71421'E
61	51° 41.78502'N	01° 51.60623'E
62	51° 45.61162'N	01° 51.61163'E

General provisions

97-6. This marine licence remains in force until the authorised development has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 (approval of decommissioning programmes) of the 2004 Act, including any modification to the programme under section 108 (reviews and revisions of decommissioning programmes) of the 2004 Act, and the completion of such programme has been confirmed by the Secretary of State in writing.

98-7. The provisions of section 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this marine licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 5 (benefit of the Order).

99-8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

100-9. Any amendments to or variations from the approved details, plan or scheme must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the MMO that it is unlikely to give rise to any materially new or materially greater environmental effects from those assessed in the environmental statement.

PART 2

CONDITIONS

Design parameters

~~101.10.~~—(1) The total number of wind turbine generators comprised in the authorised development must not exceed 57.

(2) Subject to paragraph (3), each wind turbine generator forming part of the authorised development must not—

- (a) exceed a height of 377.39 metres when measured from MHWS to the tip of the vertical blade;
- (b) exceed a rotor diameter of 337 metres;
- (c) be less than 27 metres from MHWS to the lowest point of the rotating blade; and
- (d) be less than 1180 metres from the nearest wind turbine generator in a downwind direction and 944 metres from the nearest wind turbine generator in a crosswind direction.

(3) The minimum distance in paragraph (2)(d) between each wind turbine generator is to be measured from the centre point of the wind turbine generator.

(4) Wind turbine generator foundation structures forming part of the authorised development must be one of the following foundation options—

- (a) monopile foundations;
- (b) mono suction bucket foundations;
- ~~(c)—gravity base system foundations;~~
- ~~(d)(c)~~ multi-leg pin-piled jacket foundations; or
- ~~(e)—multi-leg suction bucket jacket foundations; or~~
- ~~(f)(d)~~ multi-leg gravity base system jacket foundations.

(5) No wind turbine generator—

- (a) jacket foundation employing pin piles forming part of the authorised development may—
 - (i) have a pin pile diameter of greater than six metres; and
 - (ii) employ more than eight pin piles per jacket foundation; and
- (b) monopile foundation forming part of the authorised development may not have a diameter greater than 17 metres.

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

- (a) ~~189,143.5~~94,729 square metres excluding scour protection; and
- (b) ~~4,964,261.5~~2,709,162 square metres including scour protection.

(7) The total volume of scour protection material for wind turbine generator foundations must not exceed ~~9,313,113~~4,882,186 cubic metres.

~~102.11.~~ The total length of the cable circuits in Work No. 1(b) and the area and volume of their cable protection (including cable crossings) must not exceed the following—

(1) Parameter	(2) Value
Maximum total length	170 km
Maximum protection area	204,000 m ²
Maximum protection volume	119,000 m ³

Maintenance of the authorised development

~~103.12~~^{103.12}—(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 provide otherwise.

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

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

(3) In undertaking activities under paragraph (2)(f), the undertaker must not reduce water depth by more than 5% unless agreed with the MMO in writing.

(4) An operations and maintenance plan substantially in accordance with the outline offshore operations and maintenance plan shall be submitted to the MMO for approval in consultation with the relevant SNCB at least six months prior to the commencement of operations. All operation and maintenance activities shall be carried out in accordance with the approved plan.

Vessels under the undertaker's control

~~104.13~~^{104.13}—(1) The undertaker must issue to operators of vessels under its control operating within the Order limits a code of conduct to prevent collision risk or injury to marine mammals which must be in accordance with the outline project environmental management plan.

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

Extension of time periods

~~105.14~~^{105.14}. Any time period given in this licence given to either the undertaker or the MMO may be extended with the agreement of the other party in writing such agreement not to be unreasonably withheld or delayed.

Notifications and inspections

~~106.15~~^{106.15}—(1) The undertaker must ensure that—

- (a) a copy of this marine licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with condition 24; and
 - (ii) the masters and offshore operations managers responsible for the vessels notified to the MMO in accordance with condition 24;
- (b) within 28 days of receipt of a copy of this marine licence and any subsequent variations to it, those persons referred to in sub-paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this marine licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 24 are permitted to carry out the licensed activities.

(3) The documents referred to in paragraph (1)(a) must be available for inspection by an authorised enforcement officer 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 and at the office of any offshore operations managers with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The undertaker must ensure that a copy of this marine licence and any subsequent revisions or amendments has been read and understood by the masters of any vessel being used to carry on any licensed activity set out in condition 24(3), and that a copy of this marine licence is held on board any such vessel.

(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 development.

(6) The undertaker must inform the MMO Local Office in writing at least five days prior to the commencement of the licensed activities and within five days of the completion of the licensed activity.

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

- (a) at least fourteen days prior to the commencement of offshore activities, for inclusion in the Kingfisher bulletin and offshore hazard awareness data; and
- (b) as soon as reasonably practicable, and in any event no later than 24 hours after completion of construction of all offshore activities, confirmation of notification must be provided to the MMO in writing within five days.

(8) The undertaker must ensure that a local notification to mariners is issued at least 14 days prior to the commencement of the authorised development or any relevant stage advising of the start date of Work No. 1 and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO, MCA and UK Hydrographic Office within five days of issue.

(9) The undertaker must ensure that local notifications to mariners are updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and the notices must be supplemented with VHF radio broadcasts agreed with the MCA in accordance with the project environmental management plan approved under condition 21(1)(d) and the monitoring plan approved under condition 21(1)(f). Copies of all local notifications must be provided to the MMO and UK Hydrographic Office within five days of issue, save for in the case of a notice relating to operations and maintenance, which must be provided within 24 hours of issue.

(10) The undertaker must notify the UK Hydrographic Office of the commencement of the licenced activities and completion of the licenced activities within 14 days and must make such notifications to the UK Hydrographic Office of the progress of the licenced activities as are reasonably required in order that all necessary amendments to nautical and aeronautical charts are made and the undertaker must send a copy of such notifications to the MMO and MCA within five days of the notification.

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

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

(13) The undertaker must notify the MMO in writing a minimum of five days in advance of the commencement of each discrete incident of cable repair, replacement, or protection replenishment activity. Such a notification must include proposed timings and a description of proposed methodologies.

(14) The undertaker must ensure that the MMO, the MMO Local Office, local mariners, local fishermen's organisations and the Source Data Receipt Team at the UK Hydrographic Office, Taunton, Somerset, TA1 2DN (sdr@ukho.gov.uk) are notified within five days of completion of each instance of cable repair, replacement or protection replenishment activity.

Aids to navigation

~~107.16~~—(1) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning of the authorised development seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

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

- (a) notice of commencement of construction of the authorised development 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 development.

(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 lighting and marking plan agreed pursuant to condition 21(1)(i) using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning of the authorised development seaward of MHWS notify Trinity House and the MMO in writing 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 15(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.

(6) Any jack up barges or vessels utilised during the licensed activities, when jacked up, must exhibit signals in accordance with the UK Standard Marking Schedule for Offshore Installations.

Colouring of structures

~~108.17~~—(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 paragraph (1) above, unless the MMO otherwise directs, the undertaker must ensure that the wind turbine generators are painted light grey (colour code RAL 7035).

Aviation safety

~~109.18~~—(1) The undertaker must exhibit such lights, with such shape, colour and character as are required in writing by The Air Navigation Order 2016(a) and determined necessary for aviation safety in consultation with the Defence Infrastructure Organisation Safeguarding and as directed by the Civil Aviation Authority. Lighting installed specifically to meet Ministry of

(a) S.I. 2016/765.

Defence aviation safety requirements must remain operational for the life of the authorised development unless otherwise agreed in writing with the Ministry of Defence.

(2) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, the Civil Aviation Authority and the MMO, at least 14 days prior to the commencement of the licensed activities, in writing of the following information—

- (a) the date of the commencement of the licensed activities;
- (b) the date any wind turbine generators are to be installed;
- (c) the maximum height of any construction equipment or vessels to be used;
- (d) the maximum heights of any wind turbine generator and offshore platform to be constructed (including any antennae);
- (e) the latitude and longitude of each wind turbine generator and offshore platform to be constructed,

and the Defence Infrastructure Organisation Safeguarding and the Civil Aviation Authority must be notified of any changes to the information supplied under this paragraph of this condition and of the completion of the construction of the authorised development. Copies of notifications must be provided to the MMO.

Chemicals, drilling and debris

~~110.19~~¹⁹—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised development 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^(a) (as amended) as maintained by the Centre for Environment, Fisheries and Aquaculture Science.

(2) The undertaker must ensure that any coatings and/or treatments are suitable for use in the marine environment and are used in accordance with relevant 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 15 February each year for the months August to January inclusive, and by 15 August 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 or seabed preparation for foundations, vessels or cables, and drilling mud is disposed of within the Order limits seaward of MHWS.

(6) The undertaker must ensure that any rock material used in the construction of the authorised development 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 development is misplaced or lost below MHWS, the undertaker must report the loss to the MMO Local Office in writing within 48 hours of becoming aware of it and if the MMO, in consultation with the MCA and Trinity House, 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 at its own expense.

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

(a) S.I. 2002/1355.

(9) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported in writing to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under condition 21(1)(d)(i).

(10) All dropped objects within the Order limits must be reported to the MMO using the dropped object procedure form as soon as reasonably practicable following 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

~~111.20~~112.20—(1) If, due to stress of weather or any other cause, the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life and/or of the vessel is threatened (an “unauthorised deposit”), full details of the circumstances of the deposit must be notified to the MMO in the manner provided in condition 19(10) within 48 hours of the deposit.

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

Pre-construction plans and documentation

~~112.21~~112.21—(1) The licensed activities for each stage of construction of the authorised development must not commence until the following (insofar as relevant to that activity or stage of activity) has been submitted to and approved in writing by the MMO, in consultation with, where relevant, Trinity House, the MCA, UK Hydrographic Office and relevant SNCB—

- (a) a design plan, at a scale of between 1:25,000 and 1:50,000, or in such other format as may be appropriate, including detailed representation on the most suitably scaled chart, to ensure conformity with the description of Work No. 1 and compliance with conditions 10, 11 and 12, which shows for the relevant stage—
 - (i) the proposed location, including grid co-ordinates of the centre point of the proposed location for each wind turbine generator, subject to any micro-siting required due to anthropological constraints, environmental constraints or difficult ground conditions discovered post approval under this condition and choice of foundation types for all wind turbine generators;
 - (ii) the number, specifications and dimensions of the wind turbine generators to be installed;
 - (iii) the length and arrangement of cables comprising Work No. 1(b);
 - (iv) the type and dimensions of all foundations; and
 - (v) any exclusion zones or micro-siting requirements identified in any mitigation plan pursuant to paragraph (2)(d) or relating to any habitats of principal importance identified as part of surveys undertaken in accordance with condition 25;
- (b) a construction programme for the relevant stage, unless otherwise agreed in writing with the MMO, to include details of—
 - (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant delivery of materials and installation works; and
 - (iii) an indicative written construction programme for all wind turbine generators and cable circuits comprised in Work No. 1 and the works in paragraph 2 (insofar as not shown in paragraph (ii) above);
- (c) a construction method statement in accordance with the construction methods assessed in the environmental statement and including details for the relevant stage of—

- (i) foundation installation methodology, including drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation and cable installation works and having regard to any mitigation scheme pursuant to sub-paragraph (g);
 - (ii) contractors; and
 - (iii) associated ancillary works;
- (d) a project environmental management plan covering the period of construction for the relevant stage to include details of—
 - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with and report any spills and collision incidents of the authorised development in relation to all activities carried out;
 - (ii) a chemical risk register to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) a marine biosecurity plan detailing how the risk of introduction and spread of invasive non-native species will be minimised; and
 - (iv) waste management and disposal arrangements.
- (e) a scour protection plan for the relevant stage providing details of the need, type, sources, quantity and installation methods for scour protection, which must be updated and resubmitted in writing for approval if changes to it are proposed following cable laying operations;
- (f) details of proposed pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting in accordance with conditions 25, 26 and 27;
- (g) in the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol for that stage, in accordance with the outline marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, including details of soft start procedures with specified duration periods following current best practice as advised by the relevant SNCB;
- (h) a cable specification and installation plan for the relevant stage, to include—
 - (i) technical specification of offshore cables (including fibre optic cable) below MHWS within that stage, including a desk-based assessment of attenuation of electromagnetic field strengths, shielding and cable burial depth in accordance with good industry practice;
 - (ii) a detailed cable laying plan for the Order limits within that stage, incorporating a burial risk assessment encompassing the identification of any cable protection that exceeds 5% of navigable depth referenced to Chart Datum and, in the event that any area of cable protection exceeding 5% of navigable depth is identified, details of any steps (to be determined following consultation with the MCA and Trinity House) to be taken to ensure existing and future safe navigation is not compromised or similar such assessment to ascertain suitable burial depths and cable laying techniques, including cable protection;
 - (iii) proposals for the volume and areas of cable protection to be used for each cable crossing, and proposals for timing and methodology for reporting on actual volumes and areas post construction; and
 - (iv) proposals for monitoring offshore cables including cable protection during the operational lifetime of the authorised development which includes a risk-based approach to the management of unburied or shallow buried cables;
- (i) a lighting and marking plan to be agreed in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of condition 16 relating to that stage for the lifetime of the authorised development;

- (j) an offshore monitoring plan for the relevant stage which accords with the principles set out in the outline offshore in-principle monitoring plan;
- (k) a fisheries liaison and co-existence plan for the relevant stage which accords with the principles set out in the outline fisheries liaison and co-existence plan;
- (l) a vessel traffic monitoring plan for the relevant stage which accords with the principles set out in the outline vessel traffic monitoring plan;
- (m) in the event that driven or part-driven pile foundations are proposed to be used a site integrity plan for the southern north sea special area of conservation which accords with the principles set out in the outline site integrity plan for the southern north sea special area of conservation; and
- (n) a navigation and installation plan for the relevant stage which accords with the principles set out in the outline navigation and installation plan.

(2) Subject to paragraph (3), the licensed activities or any relevant stage of those activities must not commence unless, no later than six months prior to the commencement, a marine written scheme of archaeological investigation for the stage in construction has been submitted to and approved by the MMO in writing, in accordance with the outline offshore written scheme of investigation, and in accordance with industry good practice, in consultation with the statutory historic body to include—

- (a) details of responsibilities of the undertaker, archaeological consultant and contractor;
- (b) a method statement for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
- (c) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within six months of any survey being completed;
- (d) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones prior to construction;
- (e) monitoring of archaeological exclusion zones during and post construction, including provision of a report on such monitoring;
- (f) 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 development, 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;
- (g) a reporting and recording protocol, designed in reference to the Offshore Renewables Protocol for Reporting Archaeological Discoveries as set out by the Crown Estate and reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised development; and
- (h) 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.

(3) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a method statement produced under the written scheme of investigation specific to the relevant pre-construction activities (which must accord with the details set out in the outline offshore written scheme of investigation) which has been submitted to and approved by the MMO in consultation with the statutory historic body.

(4) In the event that driven or part-driven pile foundations are proposed to be used, the hammer energy used to drive or part-drive monopile foundations must not exceed 6,000kJ and the hammer energy used to drive or part-drive pin pile foundations must not exceed 3,000kJ.

(5) No main installation vessels may undertake pile driving at more than two pile locations at any one time for the licenced activities. There will only be a maximum installation of three monopiles foundations or six pin piles within a 24-hour period.

~~(6) The licensed activities or any part of those activities must not commence until a fisheries co-existence and liaison plan in accordance with the outline fisheries co-existence and liaison plan has been submitted to and approved by the MMO in writing.~~

~~(7)~~(6) The undertaker must, before submitting any pre-construction plans and documentation required under this condition, provide a copy of the plans and documentation to any person to whom part of the benefit of the Order applying seaward of MHWS has been transferred or leased pursuant to article 5 (benefit of the order) of the Order.

~~(8)~~(7) A person receiving the plans and documents under paragraph (6) must provide any comments on the plans and documentation to the undertaker within 14 days of receipt.

~~(9)~~(8) The undertaker must participate in liaison meetings as requested from time to time by the MMO in writing in advance and must consider such matters as are determined by the MMO relating to the efficient operation of a deemed marine licence issued under this Order (including as varied or transferred).

~~113.22.~~22.—(1) Except where otherwise stated or agreed in writing with the MMO, each programme, statement, plan, protocol or scheme required to be approved under condition 21 (save for that required under condition 21(1)(f)) must be submitted for approval at least six months prior to the intended commencement of the relevant stage of the licensed activities.

(2) The pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting required under conditions 21(1)(f), must be submitted in accordance with the following, unless otherwise agreed in writing with the MMO—

- (a) at least six months prior to the first survey of the relevant stage, detail of any pre-construction surveys and an outline of all proposed monitoring;
- (b) at least six months prior to construction, detail on construction monitoring; and
- (c) at least six months prior to commissioning, detail of postconstruction (and operational) monitoring.

(3) The MMO must determine an application for approval made under condition 21 within a period of six months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker such agreement not to be unreasonably withheld or delayed.

(4) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 21, unless otherwise agreed in writing by the MMO.

(5) The plans, protocols, statements, schemes and details submitted under condition 21 must ensure that any residual effects fall within the scope of those predicted in the environmental statement.

Offshore safety management

~~114.23.~~23.—(1) No stage of the authorised development may commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate to the authorised development contained within MGN654.

(2) No stage of the authorised development may commence until the MMO, in consultation with the MCA, has confirmed in writing that an emergency response co-operation plan has been prepared by the undertaker.

Reporting of engaged agents, contractors and vessels

~~115.24.~~24.—(1) The undertaker must provide the following information to the MMO—

- (a) the name, company number, address and function of any agent, contractor or subcontractor appointed to engage in the licensed activities not less than ten working days prior to such agent or contractor commencing any licensed activity; and
 - (b) each week during the construction of the authorised development a list of the vessels currently and to be used in relation to the licensed activities, including the master's name, vessel type, vessel IMO number and vessel owner or operating company.
- (2) Any changes to the supplied details must be notified to the MMO in writing, as far as practicable, prior to the agent, contractor or vessel engaging in the licensed activities.
- (3) The undertaker must notify the MMO in writing not less than 24 hours prior to the commencement of major component exchanges, ladder replacements or cable related works of—
- (a) any agents, contractors or subcontractors that will carry out such works; and
 - (b) any vessel proposed to be used for such works, including the master's name, vessel type, vessel IMO number and vessel owner or operating company.

Pre-construction monitoring and surveys

~~116-25~~—(1) The undertaker must in discharging condition 21(1)(f) for construction submit a monitoring plan in accordance with the outline offshore in-principle monitoring plan for written approval by the MMO in consultation with the relevant SNCB, which must contain details of proposed surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report and—

- (a) the survey proposals must be in accordance with the principles set out in the outline offshore in-principle monitoring plan and 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 preconstruction position, with any limitations, and must make clear what postconstruction comparison is intended and the justification for this being required.
- (2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, the pre-construction survey proposals must comprise, in outline—
- (a) a full sea floor coverage swath-bathymetry survey of the Order limits and a buffer outside, that meets the requirements of IHO S44ed5 Order 1a, to—
 - (i) determine the location, extent and composition of any biogenic or geogenic reef features, as set out within the outline offshore in-principle monitoring plan;
 - (ii) inform future navigation risk assessments as part of the cable specification and installation plan; and
 - (iii) inform the identification of any archaeological exclusion zone and post consent monitoring of any such archaeological exclusion zone;
 - (b) a bathymetric survey that meets the requirements of IHO S44ed5 Order 1a of the area within the Order Limits within which it is proposed to carry out construction works.
- (3) The pre-construction survey(s) carried out pursuant to paragraphs (2)(a)(i) and (2)(b) must fulfil the requirements of MGN654 and its supporting 'Hydrographic Guidelines for Offshore Renewable Energy Developer' (as relevant).
- (4) The undertaker must carry out the surveys specified within the approved monitoring plan or plans in accordance with that plan or plans, unless otherwise agreed in writing by the MMO in consultation with the relevant SNCB.
- (5) Following completion of a survey carried out pursuant to this condition and prior to construction of the relevant stage, the undertaker must provide a report and full density data of the survey outcomes to the MMO, the relevant SNCB, the MCA and UK Hydrographic Office as relevant.

Construction monitoring

~~117.26~~—(1) The undertaker must, in discharging condition 21(1)(f) in respect of construction monitoring, submit a construction monitoring plan or plans for that stage in accordance with the outline offshore in-principle monitoring plan for written approval by the MMO in consultation with the relevant SNCB, which must include details of any proposed construction monitoring, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in accordance with the principles set out in the outline offshore in-principle monitoring plan and must specify the objectives for each survey and explain how the survey will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) If the plan or plans submitted to the MMO under this condition contain survey proposals, the construction monitoring plan must include, in outline—

- (a) vessel traffic monitoring by automatic identification system for the duration of the construction period, with provision for a report to be submitted to the MMO, Trinity House, and the MCA annually during the construction period for the authorised development; and
- (b) where piled foundations are to be employed, unless otherwise agreed by the MMO in writing, details of proposed monitoring of the noise generated by the installation of the first four piled foundations of each piled foundation type to be constructed collectively under this licence and the deemed marine licences granted under Schedules 9 and 10 of the Order.

(3) If, in the reasonable opinion of the MMO in consultation with the SNCB the monitoring carried out pursuant to condition 26(2)(b) above shows impacts significantly in excess to those assessed in the environmental statement and there has been a failure of the mitigations set out in the marine mammal mitigation protocol, all piling activity must cease until either contingency measures approved within the marine management mitigation protocol have been implemented or an update to the marine mammal mitigation protocol and further monitoring requirements have been agreed.

~~(3)~~(4) The undertaker must carry out the surveys specified within the approved construction monitoring plan or plans in accordance with that plan or plans, unless otherwise agreed in writing by the MMO in consultation with the relevant SNCB.

Post-construction monitoring

~~118.27~~—(1) The undertaker must, in discharging condition 21(1)(f) in respect of post-construction monitoring, submit a post-construction monitoring plan or plans for that stage in accordance with the outline offshore in-principle monitoring plan for written approval by the MMO in consultation with the relevant SNCB including details of proposed post-construction surveys, including methodologies (including appropriate buffers, where relevant) and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in accordance with the principles set out in the outline offshore in-principle monitoring plan and must specify the objectives for each survey and explain how the survey will assist in either informing a useful and valid comparison with the preconstruction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) If the plan or plans submitted to the MMO under this condition contain survey proposals, the post-construction survey plan or plans must include, in outline—

- (a) details of a survey to determine any change in the location, extent and composition of any biogenic or geogenic reef feature identified in the pre-construction survey in the parts of the offshore Order limits in which construction works were carried out. The survey design must be informed by the results of the pre-construction benthic survey;
- (b) a bathymetric survey to monitor the effectiveness of archaeological exclusion zones. The data will be analysed by an accredited archaeologist as defined in the marine written scheme of archaeological investigation required under condition 21(2);

- (c) any ornithological monitoring required by the ornithological monitoring plans submitted in accordance with condition 21(1)(j); and
- (d) vessel traffic monitoring by automatic identification system for a duration of three consecutive years following the completion of construction of the authorised development, unless otherwise agreed in writing by the MMO, with provision for a report to be submitted annually to the MMO, Trinity House, and the MCA.

(3) The undertaker must carry out the surveys specified within the approved post-construction monitoring plan or plans in accordance with that plan or plans and provide the agreed reports in the agreed format, unless otherwise agreed in writing with the MMO in consultation with the relevant SNCB.

(4) Within 12 weeks of completion of any cable repair or replacement works, the undertaker must undertake a post installation survey along the section of cable that has undergone repair or replacement to demonstrate the successful burial of the cable and submit a report to the MMO in writing on its findings.

Timing of monitoring report

~~119.28.~~ Any monitoring report compiled in accordance with the monitoring plans provided under conditions 25, 26 and 27 must be provided to the relevant body no later than four months following receipt by the undertaker of the results of monitoring to which it relates, unless otherwise agreed with the relevant body in writing.

Reporting of impact pile driving

~~120.29.~~—(1) In the event that driven or part-driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the marine noise registry—

- (a) prior to the commencement of each stage of construction of the licensed activities, information on the expected location, start and end dates of impact pile driving to satisfy the marine noise registry’s Forward Look requirements;
- (b) at six month intervals following the commencement of pile driving, information on the locations and dates of impact pile driving to satisfy the marine noise registry’s Close Out requirements; and
- (c) within 12 weeks of completion of impact pile driving, information on the locations and dates of impact pile driving to satisfy the marine noise registry’s Close Out requirements.

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

(3) In this condition, “Forward Look” and “Close Out” mean the requirements as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) as amended, updated or superseded from time to time.

Maintenance reporting

~~121.30.~~—(1) An annual maintenance report must be submitted to the MMO in writing within one month following the first anniversary of the date of commencement of operations, and every year thereafter until the permanent cessation of operations.

(2) The report must provide a record of the licensed activities as set out in condition 12 during the preceding year, the timing of activities and methodologies used.

(3) Every fifth year, the undertaker must submit to the MMO in writing, within one month of that date, a consolidated maintenance report, which will—

- (a) include a review of licensed activities undertaken during the preceding five years with reference to the reports submitted in accordance with paragraph (1) of this condition;

- (b) reconfirm the applicability of the methodologies and frequencies of the licensable activities permitted by this licence for the remaining duration of this licence.

Stages of construction

~~122.31.~~31.—(1) The licenced activities must not be commenced until a written scheme setting out the stages of construction of the authorised development seaward of MHWS has been submitted to and approved by the MMO in writing.

(2) The scheme must be implemented as approved.

(3) The written scheme referred to in paragraph (1) must be submitted to the MMO in writing four months prior to the planned commencement of the licenced activities.

Completion of construction

~~123.32.~~32.—(1) The undertaker must submit a close out report in writing to the MMO and the relevant SNCB within three months of the date of completion of construction. The close out report must confirm the date of completion of construction and must include the following details—

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

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

~~124.33.~~33. The undertaker must submit a close out report to the MCA and the UK Hydrographic Office within three months of the date of completion of construction. The close out report must confirm the date of completion of construction and must include the following—

- (a) the final number of installed wind turbine generators;
- (b) a plan of the layout of installed wind turbine generators; and
- (c) latitude and longitude coordinates of the centre point of the location of each wind turbine generator, provided as Geographical Information System data referenced to WGS84 datum.

Deployment of cable protection

~~125.34.~~34. Any cable protection authorised under this licence must be deployed within 10 years from the date ~~of~~ the Order comes into force unless otherwise agreed by the MMO in writing.

SCHEDULE 9

Article 36

DEEMED MARINE LICENCE UNDER THE 2009 ACT – TRANSMISSION ASSETS

PART 1

LICENSED MARINE ACTIVITIES

~~126-1~~1—(1) In this licence—

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

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

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

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

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

“authorised development” means Work Nos. 2, 3, 4A and 4B as described in paragraph 3 of this licence or any stage of that work;

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

“cable circuits” means a number of electrical conductors necessary to transmit electricity between two points, comprising one or more conductors which may be bundled as one cable or take the form of separate cables, and in either case the circuit may include one or more auxiliary cables for the purpose of control, monitoring, protection or general communication;

“cable crossings” means a crossing of existing cables, pipelines or other existing infrastructure by cable circuits authorised by this Order together with cable protection;

“cable protection” means physical measures for the protection of cables including but not limited to concrete mattresses, split pipe system, and/or rock placement (including material used for cable crossings);

“cable protection replenishment” means the restoration to a former level or condition of cable protection lost by natural seabed processes or human activity;

“commence” means the first carrying out of any licensed marine activities authorised by this marine licence, save for pre-construction surveys and monitoring approved under this marine licence and the activities set out in paragraph 2(e)~~“buoy” means any floating device used for navigational purposes or measurement purposes, including LIDAR buoys, wave buoys and guard buoys;~~

~~“cable circuits” means a number of electrical conductors necessary to transmit electricity between two points, comprising one or more conductors which may be bundled as one cable or take the form of separate cables, and in either case the circuit may include one or more auxiliary cables for the purpose of control, monitoring, protection or general communication;~~

~~“cable crossings” means a crossing of existing cables, pipelines or other existing infrastructure by cable circuits authorised by this Order together with cable protection;~~

-
- (a) 2004 c. 20.
(b) 2008 c. 29.
(c) 2009 c. 23.
(d) S.I. 2017/13.

~~“cable protection” means physical measures for the protection of cables including but not limited to concrete mattresses, split pipe system, and/or rock placement (including material used for cable crossings);~~

~~“cable protection replenishment” means the restoration to a former level or condition of cable protection lost by natural seabed processes or human activity;~~

~~“commence” means the first carrying out of any licensed marine activities authorised by this marine licence, save for pre construction surveys and monitoring approved under this marine licence and the activities set out in paragraph , and “commenced” and “commencement” must be construed accordingly;~~

“commissioning” means the process of assuring that all systems and components of the authorised development are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker;

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

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation – Safeguarding, St George’s House, DIO Head Office, DMS Whittington, Lichfield, Staffordshire, WS14 9PY and any successor body to its functions;

“Defra” means the Department for Environment, Food and Rural Affairs;

“dropped object procedure form” means the MMO notification proforma with reference MLDIR1 for reporting the loss or dumping of synthetic materials and other refuse at sea or any other format advised in writing by the MMO;

“emergency response co-operation plan” means the plan approved by the MCA [containing](#) the arrangements for liaison between the undertaker and HM Coastguard in the event of an emergency response;

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

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order under article 41 (certification of plans and documents, etc.);

“habitats of principal importance” means a habitat designated as being of principal importance in accordance with section 41 (biodiversity lists and action (England)) of the Natural Environment and Rural Communities Act 2006(a);

“IHO S44ed5 Order 1a” means order 1a from the fifth edition of the International Hydrographic Organisation’s Standards for Hydrographic Surveys as updated or amended from time to time;

“jacket foundation” means a lattice type structure constructed of steel and additional equipment such as, J-tubes, corrosion protection systems and access platforms attached to the seabed;

“JNCC” means the Joint Nature Conservation Committee;

“Kingfisher 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;

“Kingfisher Information Service” means the information service from non-departmental government body Seafish;

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

“lighting and marking plan” means the lighting and marking plan to be submitted to the MMO under condition 22(1)(i) of this licence;

(a) 2006 c. 16.

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace (including replenishment of cable protection) to the extent assessed in the environmental statement, and “maintenance” must be construed accordingly;

“Marine Management Organisation” or “MMO” means the Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH who is the body created under the 2009 Act and who is responsible for the monitoring and enforcement of this licence;

“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;

~~“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace (including replenishment of cable protection) to the extent assessed in the environmental statement, and “maintenance” must be construed accordingly;~~

~~“Marine Management Organisation” or “MMO” means the Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH who is the body created under the 2009 Act and who is responsible for the monitoring and enforcement of this licence;~~

~~“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;~~

“MCA” means the Maritime and Coastguard Agency, ~~an executive agency of the Department for Transport;~~

“MGN654” means “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes, as may be updated or amended from time to time;

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

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

“offshore converter platform” means a structure, authorised by the deemed marine licence in Schedule 10 to the Order, above MHWS and attached to the seabed by means of a foundation, with equipment to convert three-phase HVAC power generated by the wind turbine generations into HVDC power;

“the offshore Order limits plan” means the plan certified as the offshore Order limits plan by the Secretary of State for the purposes of the Order under article 41 (certification of plans and documents, etc.);

“offshore platform” means the offshore substation platform(s) authorised by this licence and/or the offshore converter platform;

“Offshore Renewables Protocol for Reporting Archaeological Discoveries” means the Offshore Renewables Protocol for Reporting Archaeological Discoveries, the Crown Estate (2014), Protocol for Archaeological Discoveries: Offshore Renewables Projects, Salisbury, Wessex Archaeology as amended, updated or superseded from time to time;

~~“MGN654” means “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes, as may be updated or amended from time to time;~~

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

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

~~“monopile gravity base structures” means a structure principally of steel, concrete, or steel and concrete with a base which tapers as it rises which rests on the seabed due to its own weight~~

~~with or without added ballast or additional skirts and associated equipment including J-tubes (or equivalent structures), corrosion protection systems and access platform(s) and equipment;~~

~~“offshore converter platform” means a structure, authorised by the deemed marine licence in Schedule 10 to the Order, above MHWS and attached to the seabed by means of a foundation, with equipment to convert three phase HVAC power generated by the wind turbine generations into HVDC power;~~

~~“the offshore Order limits plan” means the plan certified as the offshore Order limits plan by the Secretary of State for the purposes of the Order under article 41 (certification of plans and documents, etc.);~~

~~“offshore platform” means the offshore substation platform(s) authorised by this licence and/or the offshore converter platform;~~

~~“Offshore Renewables Protocol for Reporting Archaeological Discoveries” means the Offshore Renewables Protocol for Reporting Archaeological Discoveries, the Crown Estate (2014), Protocol for Archaeological Discoveries: Offshore Renewables Projects, Salisbury, Wessex Archaeology as amended, updated or superseded from time to time;~~

“offshore substation platform” means a structure above MHWS and attached to the seabed by means of a foundation, with one or more decks, whether open or fully clad, accommodating electrical power transformers, switchgear, instrumentation, protection and control systems, 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;

“operation” means the undertaking of the licensed activities which are not part of the construction, commissioning or decommissioning of the authorised development;

“Order” means the North Falls Offshore Wind Farm Order 202[];

“the Order limits” means the limits shown on the works plans within which the authorised development may be carried out, the grid coordinates for the area seaward of MHWS are set out in paragraph 5 of Part 1 of this licence;

“outline fisheries liaison and co-existence plan” means the document certified as the outline fisheries liaison and co-existence plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline marine mammal mitigation protocol” means the document certified as the outline marine mammal mitigation protocol by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline navigation and installation plan” means the document certified as the outline navigation and installation plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline offshore in-principle monitoring plan” means the document certified as the outline offshore in-principle monitoring plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline offshore written scheme of investigation” means the document certified as the outline offshore written scheme of investigation by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline project environmental management plan” means the document certified as the outline project environmental management plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline site integrity plan for the southern north sea special area of conservation” means the document certified as the outline site integrity plan for the southern north sea special area of conservation by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline vessel traffic monitoring plan” means the document certified as the outline vessel traffic monitoring plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“pin piled jacket” means a jacket attached to the seabed using pin piles;

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

“platform interconnector cable” means one or more electricity cables connecting offshore platforms to each other;

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

“SNCB” means the statutory nature conservation body being the appropriate nature conservation body as defined in Regulation 5 of the Conservation of Habitats and Species Regulations 2017(a) or its equivalent in the 2017 Regulations;

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

“suction caisson (or bucket)” means a steel cylindrical structure attached to the legs of a jacket foundation which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

“suction caisson jacket” means a jacket attached to the seabed using suction caissons (typically one per leg)

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

“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;

“UK Standard Marking Schedule for Offshore Installations” means the Standard Marking Schedule for Offshore Installations published by the Department of Energy & Climate Change with reference DECC 04/11.

“undertaker” means, subject to article 5 (benefit of the Order), North Falls Offshore Wind Farm Limited (company number 12435947) ~~and having its registered address at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, United Kingdom, SN5 6PB;~~;

“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, authorised by the deemed marine licence in Schedule 8 to the Order, comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s) (or equivalent structures), 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, and radar equipment, fixed to a foundation or transition piece;~~

“working day” means a day which is not a weekend, bank holiday or public holiday in England; and

(a) S.I. 2017/1012.

“works plans (offshore)” means the plan or plans certified as the works plans (offshore) by the Secretary of State for the purposes of the Order under article 41 (certification of plans and documents, etc.).

(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) A reference in this licence to a work identified by the number of the work is to be construed as a reference to the work of that number given in paragraph 3 of this licence.

(4) Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time;
- (b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

(5) 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) Civil Aviation Authority

Aviation House
Beehive Ring Road
Crawley
West Sussex
RH6 0YR

(b) Historic England

East of England Regional Office
Brooklands
24 Brooklands Avenue
Cambridge
CB2 8BU

(c) Marine Management Organisation

Marine Licensing Team
Lancaster House Hampshire Court
Newcastle Business Park
Newcastle upon Tyne
NE4 7YH
Tel: 0300 123 1032;

(d) Marine Management Organisation (Local Office)

[Pakefield Road](#)
[Lowestoft](#)
[NR33 0HT](#)
[Tel: 0208 026 0654](#)

(e) [Maritime and Coastguard Agency](#)

[Navigation Safety Branch](#)
[Bay 2/20, Spring Place](#)
[105 Commercial Road](#)
[Southampton](#)
[SO15 1EG](#)
[Tel: 020 3817 2433;](#)

(f) Ministry of Defence (as represented by Defence Infrastructure Organisation – Safeguarding)

St George’s House

153

DIO Head Office

DMS Whittington

Lichfield

Staffordshire

WS14 9PY;

(g) Natural England

Guildbourne House

Chatsworth Road

Worthing

BN11 1LD

Tel: 0300 060 4911;

(h) Trinity House

Tower Hill

London

EC3N 4DH

Tel: 020 7481 6900;

(i) The United Kingdom Hydrographic Office

Admiralty Way

Taunton

Somerset

TA1 2DN

Tel: 01823 337 900.

(6) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is marine.consents@marinemanagement.org.uk, or where contact to the Local Office if the MMO is required, harwich@marinemanagement.org.uk.

(7) Unless otherwise advised in writing by the MMO, the Marine Case Management System (“MCMS”) must be used for all licence returns or applications to vary this licence. The MCMS address is: <https://marinelicensing.marinemanagement.org.uk/>.

Details of licensed marine activities

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

the deposit at sea within the Order limits seaward of MHWS of the substances and articles specified in paragraph ~~Miranda House~~

~~The Quay~~

~~Harwich~~

~~CO12 3HH~~

~~(e)(a) Maritime and Coastguard Agency~~

~~Navigation Safety Branch~~

~~Bay 2/20, Spring Place~~

~~105 Commercial Road
Southampton
SO15 1EG
Tel: 020 3817 2433;~~

~~(f)(a) Ministry of Defence (as represented by Defence Infrastructure Organisation
Safeguarding)
St George's House
153
DIO Head Office
DMS Whittington
Lichfield
Staffordshire
WS14 9PY;~~

~~(g)(a) Natural England
Guildbourne House
Chatsworth Road
Worthing
BN11 1LD
Tel: 0300 060 4911;~~

~~(h)(a) Trinity House
Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;~~

~~(i)(a) The United Kingdom Hydrographic Office
Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;~~

~~(6)(1) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is marine.consent@marinemanagement.org.uk, or where contact to the Local Office if the MMO is required, harwich@marinemanagement.org.uk.~~

~~(7)(1) Unless otherwise advised in writing by the MMO, the Marine Case Management System ("MCMS") must be used for all licence returns or applications to vary this licence. The MCMS address is: <https://marinelicensing.marinemanagement.org.uk/>.~~

Details of licensed marine activities

~~127.1. Subject to the licence conditions in Part 2, this licence authorises the undertaker (and any agent or contractor acting on its behalf) to carry out the following licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act —~~

- ~~(a) the deposit at sea within the Order limits seaward of MHWS of the substances and articles specified in paragraph 4 below and in Work Nos. 2 to 4A of up to 3,019,856 cubic metres (being a maximum, not an approximate upper figure) of inert material of natural origin produced during construction drilling or seabed preparation for foundation~~

works and cable installation preparation and excavation of drilling pits for trenchless installation techniques;

- (b) the construction of works in or over the sea, and or on or under the seabed;
- (c) dredging for the purposes of seabed preparation for foundation works, preparation for construction vessels and/or electrical circuit works;
- (d) boulder clearance works by displacement ploughing or subsea grab technique or any other equivalent method;
- (e) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation;
- (f) removal of static fishing equipment;
- (g) wet storage; and
- (h) site preparation works.

~~128.2.~~ Such activities described in paragraph 2 are authorised in relation to the construction, maintenance and operation of—

Work No. 2— up to two offshore substation platforms each fixed to the seabed by one of the following foundation types: monopile, ~~gravity base system~~, multi-leg pin pile jacket or multi-leg suction bucket jacket and a platform interconnector cable including one or more cable crossings.

Work No. 3— up to two cable circuits between Work No. 2 and Work No. 4A, including one or more cable crossings;

Work No. 4A—up to two cable circuits and associated ducting between Work No. 3 and Work No. 4B including up to three drilling exit pits for trenchless installation techniques, one or more cable crossings and a temporary work area for vessels to carry out anchoring and positioning.

Work No. 4B—landfall connection works comprising up to two cable circuits and associated ducting between Work No. 4A and Work No. 4C, including trenchless installation technique works.

In connection with such Works Nos. 2, 3 4A, and 4B and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence, including—

- (a) scour protection around the foundations of the offshore substation platforms;
- (b) cable protection measures such as the placement of rock and/or concrete mattresses;
- (c) the removal of material from the seabed required for the construction of Work Nos. 2, 3 and 4A;
- (d) temporary landing places, moorings or other means of accommodating or anchoring vessels in the construction and/or maintenance of the authorised development and buoys.

~~129.4.~~ The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete and grout;
- (d) sand and gravel;
- (e) plastic, synthetic and rubber;
- (f) material extracted from the seabed within the offshore Order limits during construction drilling or seabed preparation for foundation works, vessels and cable installation preparation works and excavation of drilling pits for trenchless installation techniques;

- (g) anchors and weights used for the calibration of vessels, consisting of a hessian sack, metal shackles or chains; and
- (h) marine coatings, other chemicals and timber.

~~130.5.~~ 5. The grid coordinates within which that part of the authorised development comprising Work Nos. 2, 3 and 4A must be located are specified below and more particularly on the offshore Order limits and grid coordinates plan—

(1) <i>Point ID</i>	(2) <i>Latitude (WGS84 (DDM))</i>	(3) <i>Longitude (WGS84 (DDM))</i>
1	51° 49.15653'N	01° 14.19781'E
2	51° 48.89411'N	01° 16.00324'E
3	51° 48.93931'N	01° 20.16189'E
4	51° 51.14871'N	01° 26.78016'E
5	51° 52.50692'N	01° 27.14152'E
6	51° 52.57065'N	01° 27.16916'E
7	51° 52.64883'N	01° 27.22273'E
8	51° 52.72182'N	01° 27.29646'E
9	51° 52.78924'N	01° 27.39211'E
10	51° 52.86734'N	01° 27.55868'E
11	51° 53.26911'N	01° 29.04967'E
12	51° 53.29595'N	01° 29.19064'E
13	51° 53.30653'N	01° 29.39203'E
14	51° 53.28761'N	01° 29.59449'E
15	51° 52.70790'N	01° 31.99872'E
16	51° 52.63952'N	01° 32.20092'E
17	51° 52.47783'N	01° 32.62017'E
18	51° 52.44756'N	01° 32.68431'E
19	51° 52.40237'N	01° 32.74776'E
20	51° 51.05315'N	01° 34.25159'E
21	51° 50.81073'N	01° 37.13538'E
22	51° 50.96701'N	01° 38.26250'E
23	51° 51.10934'N	01° 38.88062'E
24	51° 51.46878'N	01° 40.28054'E
25	51° 51.48276'N	01° 40.47097'E
26	51° 51.47070'N	01° 40.63503'E
27	51° 51.43842'N	01° 40.78925'E
28	51° 51.37801'N	01° 40.94765'E
29	51° 51.28360'N	01° 41.08521'E
30	51° 48.92805'N	01° 43.48196'E
31	51° 48.81263'N	01° 43.54037'E
32	51° 47.56548'N	01° 43.88635'E
33	51° 47.50920'N	01° 43.94405'E
34	51° 47.47326'N	01° 44.01182'E
35	51° 47.31551'N	01° 44.55852'E
36	51° 46.18399'N	01° 51.52207'E
36	51° 46.18399'N	01° 51.52207'E
37	51° 46.45215'N	01° 51.46739'E
38	51° 47.79417'N	01° 56.0602'E
39	51° 45.96006'N	01° 54.98406'E
40	51° 44.20008'N	01° 56.16270'E
41	51° 43.43466'N	01° 58.08954'E
42	51° 44.92260'N	02° 02.79174'E

43	51° 44.20590'N	02° 02.65992'E
44	51° 44.16756'N	02° 02.36766'E
45	51° 43.89822'N	02° 01.62702'E
46	51° 43.70418'N	02° 01.18500'E
47	51° 43.46172'N	02° 00.54066'E
48	51° 42.90816'N	01° 59.73738'E
49	51° 42.25464'N	01° 58.18482'E
50	51° 41.80842'N	01° 58.22082'E
51	51° 38.66118'N	01° 54.67986'E
52	51° 37.76189'N	01° 52.32853'E
53	51° 39.03140'N	01° 52.10085'E
54	51° 40.08359'N	01° 52.71647'E
55	51° 40.32461'N	01° 52.55921'E
56	51° 40.41888'N	01° 52.66356'E
57	51° 40.36970'N	01° 52.53295'E
58	51° 40.36967'N	01° 52.52982'E
59	51° 40.80925'N	01° 52.24298'E
60	51° 41.18441'N	01° 51.71421'E
61	51° 41.78502'N	01° 51.60623'E
62	51° 45.61162'N	01° 51.61163'E
62	51° 45.61162'N	01° 51.61163'E
63	51° 46.80531'N	01° 44.27081'E
64	51° 47.02029'N	01° 43.53214'E
65	51° 47.14620'N	01° 43.29432'E
66	51° 47.35775'N	01° 43.07473'E
67	51° 48.70770'N	01° 42.68329'E
68	51° 50.92504'N	01° 40.42289'E
69	51° 50.60854'N	01° 39.20429'E
70	51° 50.44922'N	01° 38.51020'E
71	51° 50.26732'N	01° 37.16414'E
72	51° 50.53831'N	01° 33.91006'E
73	51° 50.55473'N	01° 33.82809'E
74	51° 50.58713'N	01° 33.73900'E
75	51° 50.63161'N	01° 33.66473'E
76	51° 52.05000'N	01° 32.08189'E
77	51° 52.22165'N	01° 31.61943'E
78	51° 52.76395'N	01° 29.36475'E
79	51° 52.4014'N	01° 27.99607'E
80	51° 50.89889'N	01° 27.59335'E
81	51° 50.83063'N	01° 27.54393'E
82	51° 50.76639'N	01° 27.45303'E
83	51° 48.42854'N	01° 20.46655'E
84	51° 48.41280'N	01° 20.40213'E
85	51° 48.40234'N	01° 20.31730'E
86	51° 48.33800'N	01° 14.52722'E
87	51° 48.87115'N	01° 13.61544'E
88	51° 48.98239'N	01° 13.82661'E
89	51° 48.98187'N	01° 13.82982'E
90	51° 49.04064'N	01° 13.94325'E
91	51° 49.03475'N	01° 13.95772'E
92	51° 49.09068'N	01° 14.07320'E
93	51° 49.09716'N	01° 14.07885'E

General provisions

~~131.6.~~ This marine licence remains in force until the authorised development has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 (approval of decommissioning programmes) of the 2004 Act, including any modification to the programme under section 108 (reviews and revisions of decommissioning programmes) of the 2004 Act, and the completion of such programme has been confirmed by the Secretary of State in writing.

~~132.7.~~ The provisions of section 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this marine licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 5 (benefit of the Order).

~~133.8.~~ With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

~~134.9.~~ Any amendments to or variations from the approved details, plan or scheme must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the MMO that it is unlikely to give rise to any materially new or materially greater environmental effects from those assessed in the environmental statement.

PART 2 CONDITIONS

Design parameters

~~135.10.~~—(1) The dimensions of any offshore substation platform forming part of the authorised development (including cranes and helideck) must not exceed—

- (a) 61.68 metres in height when measured from MHWS;
- (b) 60 metres in length; and
- (c) 2,400 m² topside area.

(2) Offshore substation platform foundation structures forming part of the authorised development must be one of either monopile foundation, ~~gravity base system foundation,~~ multi-leg pin pile jacket foundation or multi-leg suction bucket jacket foundation.

(3) No offshore substation platform—

- (a) jacket foundation employing pin piles forming part of the authorised development may—
- (b) have a pin pile diameter of greater than 3.5 metres; and
- (c) employ more than 12 pin piles per jacket foundation; and
- (d) monopile foundation forming part of the authorised development may not have a diameter greater than 17 metres.

~~136.11.~~—(1) The total number of offshore platforms constructed under this licence and the licence granted under Schedule 10 to the Order must not exceed two.

(2) The total permanent seabed footprint area for offshore platform foundations must not exceed—

- (a) ~~6,637~~5,890 square metres excluding scour protection; and
- (b) ~~174,184~~166,715 square metres including scour protection.

(3) The total volume of scour protection material for the offshore platform foundations is ~~326,776~~50,316 cubic metres.

~~137.12.~~ The total length of the cable circuits in Work Nos. 2, 3 and 4A, and the area and volume of their cable protection (including cable crossings) must not exceed the following—

(1) Work No.	(2) Parameter	(3) Value
Work No. 2	Maximum total length	20 km
	Maximum protection area	24,000 m ²
	Maximum protection volume	22,400 14,000 m ³
Work Nos. 3 and 4A	Maximum total length	125.4 km
	Maximum protection area	75,240 m ²
	Maximum protection volume	70,224 43,890 m ³

Maintenance of the authorised development

~~138.13.~~—(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 provide otherwise.

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

- (a) repair, maintenance, refurbishment and replacement of offshore electrical components;
- (b) painting and applying other coatings;
- (c) bird waste and marine growth removal;
- (d) cable remedial burial;
- (e) cable repairs and replacement;
- (f) cable protection replenishment;
- (g) access ladder and boat landing replacement;
- (h) replacement of offshore platform anodes; and
- (i) J-tube repair/replacement.

(3) In undertaking activities under paragraph (2)(f), the undertaker must not reduce water depth by more than 5% unless agreed with the MMO in writing.

(4) An operations and maintenance plan substantially in accordance with the outline offshore operations and maintenance plan shall be submitted to the MMO for approval in consultation with the relevant SNCB at least six months prior to the commencement of operations. All operation and maintenance activities shall be carried out in accordance with the approved plan.

Vessels under the undertaker's control

~~139.14.~~—(1) The undertaker must issue to operators of vessels under its control operating within the Order limits a code of conduct to prevent collision risk or injury to marine mammals which must be in accordance with the outline project environmental management plan.

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

Extension of time periods

~~140.15.~~ Any time period given in this licence given to either the undertaker or the MMO may be extended with the agreement of the other party in writing such agreement not to be unreasonably withheld or delayed.

Notifications and inspections

~~141.16.~~—(1) The undertaker must ensure that—

- (a) a copy of this marine licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with condition 25; and
 - (ii) the masters and offshore operations managers responsible for the vessels notified to the MMO in accordance with condition 25;
 - (b) within 28 days of receipt of a copy of this marine licence and any subsequent variations to it those persons referred to in sub-paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this marine licence.
- (2) Only those persons and vessels notified to the MMO in accordance with condition 25 are permitted to carry out the licensed activities.
- (3) The documents referred to in paragraph (1)(a) must 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 and at the office of any offshore operations managers with responsibility for vessels from which authorised deposits or removals are to be made.
- (4) The undertaker must ensure that a copy of this marine licence and any subsequent revisions or amendments has been read and understood by the masters of any vessel being used to carry on any licensed activity set out in condition 25(3), and that a copy of this marine licence is held on board any such vessel.
- (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 development.
- (6) The undertaker must inform the MMO Local Office in writing at least five days prior to the commencement of the licensed activities and within five days of the completion of the licensed activity.
- (7) The undertaker must inform the Kingfisher Information Service, [by email to kingfisher@seafish.co.uk](mailto:kingfisher@seafish.co.uk), of details regarding the vessel routes, timings and locations relating to the construction of the authorised development or relevant stage—
- (a) at least fourteen days prior to the commencement of offshore activities, for inclusion in the Kingfisher bulletin and offshore hazard awareness data; and
 - (b) as soon as reasonably practicable, and in any event no later than 24 hours after completion of construction of all offshore activities, confirmation of notification must be provided to the MMO in writing within five days.
- (8) The undertaker must ensure that a local notification to mariners is issued at least 14 days prior to the commencement of the authorised development or any relevant stage advising of the start date of the relevant Work No. and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO, MCA and UK Hydrographic Office within five days of issue.
- (9) The undertaker must ensure that local notifications to mariners are updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and the notices must be supplemented with VHF radio broadcasts agreed with the MCA in accordance with the project environmental management plan approved under deemed marine licence condition 22(1)(d) and monitoring plan approved under condition 22(1)(f). Copies of all local notifications must be provided to the MMO and UK Hydrographic Office within five days of issue, save for in the case of a notice relating to operations and maintenance, which must be provided within 24 hours of issue.
- (10) The undertaker must notify the UK Hydrographic Office of the commencement of the licensed activities and completion of the licensed activities within 14 days and must make such

notifications to the UK Hydrographic Office of the progress of the licenced activities as are reasonably required in order that all necessary amendments to nautical and aeronautical charts are made and the undertaker must send a copy of such notifications to the MMO and MCA within five days of the notification.

(11) In case of damage to, or destruction or decay of, the authorised development seaward of MHWS or any part thereof, excluding the exposure of cables, the undertaker must as soon as reasonably practicable and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify the MMO, the [MMO Local Office](#), the MCA, Trinity House, the Kingfisher Information Service and the UK Hydrographic Office.

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

(13) The undertaker must notify the MMO in writing a minimum of five days in advance of the commencement of each discrete incident of cable repair, replacement, or protection replenishment activity. Such a notification must include proposed timings and a description of proposed methodologies.

(14) The undertaker must ensure that the MMO, the MMO Local Office, local mariners, local fishermen's organisations and the Source Data Receipt Team at the UK Hydrographic Office, Taunton, Somerset, TA1 2DN (sdr@ukho.gov.uk) are notified within five days of completion of each instance of cable repair, replacement or protection replenishment activity.

Aids to navigation

~~142.17~~—(1) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning of the authorised development seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

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

- (a) notice of commencement of construction of the authorised development 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 development.

(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 lighting and marking plan agreed pursuant to condition 22(1)(i) using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning of the authorised development seaward of MHWS notify Trinity House and the MMO in writing 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 16(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.

(6) Any jack up barges or vessels utilised during the licensed activities, when jacked up, must exhibit signals in accordance with the UK Standard Marking Schedule for Offshore Installations.

Colouring of structures

~~143.18.~~ The undertaker must colour all offshore substation platform 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.

Aviation safety

~~144.19.~~—(1) The undertaker must exhibit such lights, with such shape, colour and character as are required in writing by The Air Navigation Order 2016^(a) and determined necessary for aviation safety in consultation with the Defence Infrastructure Organisation Safeguarding and as directed by the Civil Aviation Authority. Lighting installed specifically to meet Ministry of Defence aviation safety requirements must remain operational for the life of the authorised development unless otherwise agreed in writing with the Ministry of Defence.

(2) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, the Civil Aviation Authority and the MMO, at least 14 days prior to the commencement of the licensed activities, in writing of the following information—

- (a) the date of the commencement of the licensed activities;
- (b) the date any offshore substation platforms are to be installed;
- (c) the maximum height of any construction equipment or vessels to be used;
- (d) the maximum heights of offshore substation platforms to be constructed (including any antennae);
- (e) the latitude and longitude of each offshore substation platform to be constructed,

and the Defence Infrastructure Organisation Safeguarding and the Civil Aviation Authority must be notified of any changes to the information supplied under this paragraph of this condition and of the completion of the construction of the authorised development. Copies of notifications must be provided to the MMO.

Chemicals, drilling and debris

~~145.20.~~—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised development 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^(b) (as amended) as maintained by the Centre for Environment, Fisheries and Aquaculture Science.

(2) The undertaker must ensure that any coatings and/or treatments are suitable for use in the marine environment and are used in accordance with relevant 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 15 February each year for the months August to January inclusive, and by 15 August 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, vessels or cables and drilling mud is disposed of within the Order limits seaward of MHWS.

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

(a) S.I. 2016/765.

(b) S.I. 2002/1355.

(7) In the event that any rock material used in the construction of the authorised development is misplaced or lost below MHWS, the undertaker must report the loss to the MMO Local Office in writing within 48 hours of becoming aware of it and if the MMO, in consultation with the MCA and Trinity House, 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 at its own expense.

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

(9) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported in writing to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under condition 22(1)(d)(i).

(10) All dropped objects within the Order limits must be reported to the MMO using the dropped object procedure form as soon as reasonably practicable following 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

~~146.21.~~^{146.21.}—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life and/or of the vessel is threatened (an “unauthorised deposit”), full details of the circumstances of the deposit must be notified to the MMO in the manner provided in condition 20(10) within 48 hours.

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

Pre-construction plans and documentation

~~147.22.~~^{147.22.}—(1) The licensed activities for each stage of construction of the authorised development must not commence until the following (insofar as relevant to that activity or stage of activity) has been submitted to and approved in writing by the MMO, in consultation with, where relevant, Trinity House, the MCA, UK Hydrographic Office and relevant SNCB—

- (a) A design plan at a scale of between 1:25,000 and 1:50,000, or in such other format as may be appropriate, including detailed representation on the most suitably scaled chart, to ensure conformity with the description of Work Nos. 2, 3 and 4A and compliance with conditions 10, 11, 12 and 13, which shows for the relevant stage—
 - (i) the proposed location, including grid co-ordinates of the centre point of the proposed location for each offshore substation platform, subject to any micro-siting required due to anthropological constraints, environmental constraints or difficult ground conditions discovered post approval under this condition and choice of foundation types for all offshore platforms;
 - (ii) the dimensions of each offshore substation platform to be installed, including any antennae;
 - (iii) the length and arrangement of cables comprising Work Nos. 2, 3 and 4A;
 - (iv) the type and dimensions of all foundations for the offshore substation platforms;
 - (v) the proposed layout of all offshore substation platforms including any exclusion zones identified under paragraph (2)(d); and
 - (vi) any exclusion zones or micro-siting requirements identified in any mitigation plan pursuant to paragraph (2)(d) or relating to any habitats of principal importance identified as part of surveys undertaken in accordance with condition 26;

- (b) a construction programme for the relevant stage, unless otherwise agreed in writing with the MMO, to include details of—
 - (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant delivery of materials and installation works; and
 - (iii) an indicative written construction programme for all offshore substation platforms and cable comprised in the Work Nos. 2, 3 and 4A and the works in paragraph 2 (insofar as not shown in paragraph (ii) above);
- (c) a construction method statement in accordance with the construction methods assessed in the environmental statement and including details for the relevant stage of—
 - (i) foundation installation methodology, including drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation and cable installation works and having regard to any mitigation scheme pursuant to sub-paragraph (g);
 - (ii) contractors; and
 - (iii) associated ancillary works;
- (d) a project environmental management plan covering the period of construction for the relevant stage to include details of—
 - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with and report any spills and collision incidents of the authorised development in relation to all activities carried out;
 - (ii) a chemical risk register to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) a marine biosecurity plan detailing how the risk of introduction and spread of invasive non-native species will be minimised; and
 - (iv) waste management and disposal arrangements;
- (e) a scour protection plan for the relevant stage providing details of the need, type, sources, quantity and installation methods for scour protection, which must be updated and resubmitted in writing for approval if changes to it are proposed following cable laying operations;
- (f) details of proposed pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting in accordance with conditions 26, 27 and 28;
- (g) in the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol for that stage, in accordance with the outline marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, including details of soft start procedures with specified duration periods following current best practice as advised by the relevant SNCB;
- (h) a cable specification and installation plan for the relevant stage, to include—
 - (i) technical specification of offshore cables (including fibre optic cable) below MHWS within that stage, including a desk-based assessment of attenuation of electromagnetic field strengths, shielding and cable burial depth in accordance with good industry practice;
 - (ii) a detailed cable laying plan for the Order limits within that stage, incorporating a burial risk assessment encompassing the identification of any cable protection that exceeds 5% of navigable depth referenced to Chart Datum and, in the event that any area of cable protection exceeding 5% of navigable depth is identified, details of any steps (to be determined following consultation with the MCA and Trinity House) to be taken to ensure existing and future safe navigation is not compromised or similar

such assessment to ascertain suitable burial depths and cable laying techniques, including cable protection;

- (iii) proposals for the volume and areas of cable protection to be used for each cable crossing, and proposals for timing and methodology for reporting on actual volumes and areas post construction; and
- (iv) proposals for monitoring offshore cables including cable protection during the operational lifetime of the authorised development which includes a risk based approach to the management of unburied or shallow buried cables;
- (i) a lighting and marking plan to be agreed in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of condition 17 relating to that stage for the lifetime of the authorised development;
- (j) an offshore monitoring plan for the relevant stage which accords with the principles set out in the outline offshore in-principle monitoring plan.
- (k) a fisheries liaison and co-existence plan for the relevant stage which accords with the principles set out in the outline fisheries liaison and co-existence plan;
- (l) a vessel traffic monitoring plan for the relevant stage which accords with the principles set out in the outline vessel traffic monitoring plan;
- (m) in the event that driven or part-driven pile foundations are proposed to be used, a site integrity plan for the southern north sea special area of conservation which accords with the principles set out in the outline site integrity plan for the southern north sea special area of conservation; and
- (n) a navigation and installation plan for the relevant stage which accords with the principles set out in the outline navigation and installation plan.

(2) Subject to paragraph (2), the licensed activities or any relevant stage of those activities must not commence unless no later than six months prior to the commencement a marine written scheme of archaeological investigation for the stage in construction has been submitted to and approved by the MMO in writing, in accordance with the outline offshore written scheme of investigation, and in accordance with industry good practice, in consultation with the statutory historic body to include—

- (a) details of responsibilities of the undertaker, archaeological consultant and contractor;
- (b) a method statement for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
- (c) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within six months of any survey being completed;
- (d) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones prior to construction;
- (e) monitoring of archaeological exclusion zones during and post construction, including provision of a report on such monitoring;
- (f) 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 development, 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;
- (g) a reporting and recording protocol, designed in reference to the Offshore Renewables Protocol for Reporting Archaeological Discoveries as set out by the Crown Estate and reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised development; and
- (h) 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.

(3) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a method statement produced under the written scheme of investigation specific to the relevant pre-construction activities (which must accord with the details set out in the outline offshore written scheme of investigation) which has been submitted to and approved by the MMO in consultation with the statutory historic body.

(4) In the event that driven or part-driven pile foundations are proposed to be used, the hammer energy used to drive or part-drive monopile foundations must not exceed 6,000kJ and the hammer energy used to drive or part-drive pin pile foundations must not exceed 3,000kJ.

(5) No more than two main vessels may be engaged at any time in activities related to piling for the licenced activities. There will only be a maximum installation of three monopiles foundations or six pin piles within a 24-hour period.

~~(6) The licensed activities or any part of those activities must not commence until a fisheries co-existence and liaison plan in accordance with the outline fisheries co-existence and liaison plan has been submitted to and approved by the MMO in writing.~~

~~(7)~~(6) The undertaker must, before submitting any pre-construction plans and documentation required under this condition, provide a copy of the plans and documentation to any person to whom part of the benefit of the Order applying seaward of MHWS has been transferred or leased pursuant to article 5 (benefit of the order) of the Order.

~~(8)~~(7) A person receiving the plans and documents under paragraph (6) must provide any comments on the plans and documentation to the undertaker within 14 days of receipt.

~~(9)~~(8) The undertaker must participate in liaison meetings as requested from time to time by the MMO in writing in advance and must consider such matters as are determined by the MMO relating to the efficient operation of a deemed marine licence issued under this Order (including as varied or transferred).

~~148.23.~~23.—(1) Except where otherwise stated or agreed in writing with the MMO, each programme, statement, plan, protocol or scheme required to be approved under condition 22 (save for that required under condition 22(1)(f)) must be submitted for approval at least six months prior to the intended commencement of the relevant stage of the licensed activities.

(2) The pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting required under condition 22(1)(f) must be submitted in accordance with the following, unless otherwise agreed in writing with the MMO—

- (a) at least six months prior to the first survey of the relevant stage, detail of any pre-construction surveys and an outline of all proposed monitoring;
- (b) at least six months prior to construction, detail on construction monitoring; and
- (c) at least six months prior to commissioning, detail of postconstruction (and operational) monitoring.

(3) The MMO must determine an application for approval made under condition 22 within a period of six months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker such agreement not to be unreasonably withheld or delayed.

(4) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 22, unless otherwise agreed in writing by the MMO.

(5) The plans, protocols, statements, schemes and details submitted under condition 22 must ensure that any residual effects fall within the scope of those predicted in the environmental statement.

Offshore safety management

~~149.24.~~—(1) No stage of the authorised development may commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate to the authorised development contained within MGN654.

(2) No stage of the authorised development may commence until the MMO, in consultation with the MCA, has confirmed in writing that an emergency response co-operation plan has been prepared by the undertaker.

Reporting of engaged agents, contractors and vessels

~~150.25.~~—(1) The undertaker must provide the following information to the MMO—

- (a) the name, company number, address and function of any agent, contractor or subcontractor appointed to engage in the licensed activities not less than ten working days prior to such agent or contractor commencing any licensed activity; and
- (b) each week during the construction of the authorised development a list of the vessels currently and to be used in relation to the licensed activities, including the master's name, vessel type, vessel IMO number and vessel owner or operating company.

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

(3) The undertaker must notify the MMO in writing not less than 24 hours prior to the commencement of major component exchanges, ladder replacements or cable related works—

- (a) any agents, contractors or subcontractors that will carry out such works; and
- (b) any vessel proposed to be used for such works, including the master's name, vessel type, vessel IMO number and vessel owner or operating company.

Pre-construction monitoring and surveys

~~151.26.~~—(1) The undertaker must in discharging condition 22(1)(f) for construction submit a monitoring plan in accordance with the outline offshore in-principle monitoring plan for written approval by the MMO in consultation with the relevant SNCB, which must contain details of proposed surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report and—

- (a) the survey proposals must be in accordance with the principles set out in the outline offshore in-principle monitoring plan and 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 preconstruction position, with any limitations, and must make clear what postconstruction comparison is intended and the justification for this being required.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, the pre-construction survey proposals must comprise, in outline—

- (a) a full sea floor coverage swath-bathymetry survey of the Order limits and a buffer outside, that meets the requirements of IHO S44ed5 Order 1a, to—
 - (i) determine the location, extent and composition of any biogenic or geogenic reef features, as set out within the outline offshore in-principle monitoring plan;
 - (ii) inform future navigation risk assessments as part of the cable specification and installation plan; and
 - (iii) inform the identification of any archaeological exclusion zone and post consent monitoring of any such archaeological exclusion zone;

- (b) a bathymetric survey that meets the requirements of IHO S44ed5 Order 1a of the area within the Order Limits within which it is proposed to carry out construction works.

(3) The pre-construction survey(s) carried out pursuant to paragraphs (2)(a) and (2)(b) must fulfil the requirements of MGN654 and its supporting 'Hydrographic Guidelines for Offshore Renewable Energy Developer' (as relevant).

(4) The undertaker must carry out the surveys specified within the approved monitoring plan or plans in accordance with that plan or plans, unless otherwise agreed in writing by the MMO in consultation with the relevant SNCB.

(5) Following completion of a survey carried out pursuant to this condition and prior to construction of the relevant stage, the undertaker must provide a report and full density data of the survey outcomes to the MMO, the relevant SNCB, the MCA and UK Hydrographic Office as relevant.

Construction monitoring

~~152.27~~—(1) The undertaker must, in discharging condition 22(1)(f) in respect of construction monitoring, submit a construction monitoring plan or plans for that stage in accordance with the outline offshore in-principle monitoring plan for written approval by the MMO in consultation with the relevant SNCB, which must include details of any proposed construction monitoring, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in accordance with the principles set out in the outline offshore in-principle monitoring plan and must specify the objectives for each survey and explain how the survey will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) If the plan or plans submitted to the MMO under this condition contain survey proposals, the construction monitoring plan must include, in outline—

- (a) vessel traffic monitoring by automatic identification system for the duration of the construction period, with provision for a report to be submitted to the MMO, Trinity House, and the MCA annually during the construction period for the authorised development; and
- (b) where piled foundations are to be employed, unless otherwise agreed by the MMO in writing, details of proposed monitoring of the noise generated by the installation of the first four piled foundations of each piled foundation type to be constructed collectively under this licence and the deemed marine licences granted under Schedules 8 and 10 of the Order.

(3) If, in the reasonable opinion of the MMO in consultation with the SNCB the monitoring carried out pursuant to condition 27(2)(b) above shows impacts significantly in excess to those assessed in the environmental statement and there has been a failure of the mitigations set out in the marine mammal mitigation protocol, all piling activity must cease until either contingency measures approved within the marine management mitigation protocol have been implemented or an update to the marine mammal mitigation protocol and further monitoring requirements have been agreed.

~~(3)~~(4) The undertaker must carry out the surveys specified within the approved construction monitoring plan or plans in accordance with that plan or plans, unless otherwise agreed in writing by the MMO in consultation with the relevant SNCB.

Post-construction monitoring

~~153.28~~—(1) The undertaker must, in discharging condition 22(1)(f) in respect of post-construction monitoring, submit a post-construction monitoring plan or plans for that stage in accordance with the outline offshore in-principle monitoring plan for written approval by the MMO in consultation with the relevant SNCB including details of proposed post-construction surveys, including methodologies (including appropriate buffers, where relevant) and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals

must be in accordance with the principles set out in the outline offshore in-principle monitoring plan and must specify objectives for each survey and explain how the survey will assist in either informing a useful and valid comparison with the preconstruction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) If the plan or plans submitted to the MMO under this condition contain survey proposals, the post-construction survey plan or plans must include, in outline—

- (a) details of a survey to determine any change in the location, extent and composition of any biogenic or geogenic reef feature identified in the pre-construction survey in the parts of the offshore Order limits in which construction works were carried out. The survey design must be informed by the results of the pre-construction benthic survey;
- (b) a bathymetric survey to monitor the effectiveness of archaeological exclusion zones. The data will be analysed by an accredited archaeologist as defined in the marine written scheme of archaeological investigation required under condition 22(2); and
- (c) vessel traffic monitoring by automatic identification system for a duration of three consecutive years following the completion of construction of the authorised development, unless otherwise agreed in writing by the MMO, with provision for a report to be submitted annually to the MMO, Trinity House, and the MCA.

(3) The undertaker must carry out the surveys specified within the approved post-construction monitoring plan or plans in accordance with that plan or plans and provide the agreed reports in the agreed format, unless otherwise agreed in writing with the MMO in consultation with the relevant SNCB.

(4) Within 12 weeks of completion of any cable repair or replacement works, the undertaker must undertake a post installation survey along the section of cable that has undergone repair or replacement to demonstrate the successful burial of the cable, and submit a report to the MMO in writing on its findings.

Timing of monitoring report

~~154.29.~~ Any monitoring report compiled in accordance with the monitoring plans provided under conditions 26, 27 and 28 must be provided to the relevant body no later than four months following receipt by the undertaker of the results of monitoring to which it relates, unless otherwise agreed with the relevant body in writing.

Reporting of impact pile driving

~~155.30.~~—(1) In the event that driven or part-driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the marine noise registry—

- (a) prior to the commencement of each stage of construction of the licensed activities, information on the expected location, start and end dates of impact pile driving to satisfy the marine noise registry's Forward Look requirements;
- (b) at six month intervals following the commencement of pile driving, information on the locations and dates of impact pile driving to satisfy the marine noise registry's Close Out requirements; and
- (c) within 12 weeks of completion of impact pile driving, information on the locations and dates of impact pile driving to satisfy the marine noise registry's Close Out requirements.

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

(3) For the purpose of this condition, “Forward Look” and “Close Out” mean the requirements as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) as amended, updated or superseded from time to time.

Maintenance reporting

~~156.31.~~^{157.32.}—(1) An annual maintenance report must be submitted to the MMO in writing within one month following the first anniversary of the date of commencement of operations, and every year thereafter until the permanent cessation of operation.

(2) The report must provide a record of the licensed activities as set out in condition 13 during the preceding year, the timing of activities and methodologies used.

(3) Every fifth year, the undertaker must submit to the MMO in writing, within one month of that date, a consolidated maintenance report, which will—

- (a) include a review of licensed activities undertaken during the preceding five years with reference to the reports submitted in accordance with paragraph (1) of this condition;
- (b) reconfirm the applicability of the methodologies and frequencies of the licensable activities permitted by this licence for the remaining duration of this licence.

Stages of construction

~~157.32.~~^{158.33.}—(1) The licenced activities must not be commenced until a written scheme setting out the stages of construction of the authorised development seaward of MHWS has been submitted to and approved by the MMO in writing.

(2) The scheme must be implemented as approved.

(3) The written scheme referred to in paragraph (1) must be submitted to the MMO in writing four months prior to the planned commencement of the licenced activities.

Completion of construction

~~158.33.~~^{159.34.}—(1) The undertaker must submit a close out report in writing to the MMO and the relevant SNCB within three months of the date of completion of construction. The close out report must confirm the date of completion of construction and must include the final number of installed offshore substation platforms.

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

~~159.34.~~^{160.35.} The undertaker must submit a close out report to the MCA and the UK Hydrographic Office within three months of the date of completion of construction. The close out report must confirm the date of completion of construction and must include the following—

- (a) the final number of installed offshore substation platforms;
- (b) a plan of the layout of installed offshore substation platforms; and
- (c) latitude and longitude coordinates of the centre point of the location of each offshore substation platform, provided as Geographical Information System data referenced to WGS84 datum.

Deployment of cable protection

~~160.35.~~ Any cable protection authorised under this licence must be deployed within 10 years from the date the Order comes into force unless otherwise agreed by the MMO in writing.

Placement of cable and cable protection proximate to Margate and Long Sands SAC

~~36.—~~^{36.—}(1) Unless otherwise agreed in writing by the MMO in consultation with Natural England, no cable circuits comprised in Work No. 3 or cable protection measures shall be installed within the area defined by the coordinates as specified in the table in sub-paragraph (3).

(2) If agreement with the MMO is obtained pursuant to sub-paragraph (1), the undertaker must install any cable circuits or cable protection measures in accordance with the details approved under sub-paragraph (1).

(3) The coordinates referred to in sub-paragraph (1) are specified in the table—

<u>(1)</u> <u>Point</u>	<u>(2)</u> <u>Latitude</u>	<u>(3)</u> <u>Longitude</u>
<u>1</u>	<u>51° 48.36144N</u>	<u>001° 42.77159E</u>
<u>2</u>	<u>51° 48.37295N</u>	<u>001° 42.76875E</u>
<u>3</u>	<u>51° 48.41343N</u>	<u>001° 42.75876E</u>
<u>4</u>	<u>51° 48.66988N</u>	<u>001° 42.69547E</u>
<u>5</u>	<u>51° 48.67455N</u>	<u>001° 42.69432E</u>
<u>6</u>	<u>51° 48.67936N</u>	<u>001° 42.69320E</u>
<u>7</u>	<u>51° 48.69382N</u>	<u>001° 42.69006E</u>
<u>8</u>	<u>51° 48.70770N</u>	<u>001° 42.68329E</u>
<u>9</u>	<u>51° 49.05786N</u>	<u>001° 42.32663E</u>
<u>10</u>	<u>51° 49.07583N</u>	<u>001° 42.30832E</u>
<u>11</u>	<u>51° 49.21771N</u>	<u>001° 42.16377E</u>
<u>12</u>	<u>51° 49.68296N</u>	<u>001° 41.68965E</u>
<u>13</u>	<u>51° 49.72103N</u>	<u>001° 41.65085E</u>
<u>14</u>	<u>51° 50.89144N</u>	<u>001° 40.45719E</u>
<u>15</u>	<u>51° 50.92384N</u>	<u>001° 40.42412E</u>
<u>16</u>	<u>51° 50.90057N</u>	<u>001° 40.57444E</u>
<u>17</u>	<u>51° 50.73624N</u>	<u>001° 40.74293E</u>
<u>18</u>	<u>51° 50.71250N</u>	<u>001° 40.76728E</u>
<u>19</u>	<u>51° 48.88430N</u>	<u>001° 42.64015E</u>
<u>20</u>	<u>51° 48.75971N</u>	<u>001° 42.76767E</u>
<u>21</u>	<u>51° 48.75135N</u>	<u>001° 42.77623E</u>
<u>22</u>	<u>51° 48.74687N</u>	<u>001° 42.78049E</u>
<u>23</u>	<u>51° 48.74223N</u>	<u>001° 42.78428E</u>
<u>24</u>	<u>51° 48.73745N</u>	<u>001° 42.78759E</u>
<u>25</u>	<u>51° 48.73255N</u>	<u>001° 42.79039E</u>
<u>26</u>	<u>51° 48.72755N</u>	<u>001° 42.79267E</u>
<u>27</u>	<u>51° 48.72246N</u>	<u>001° 42.79444E</u>
<u>28</u>	<u>51° 48.71751N</u>	<u>001° 42.79563E</u>
<u>29</u>	<u>51° 48.71659N</u>	<u>001° 42.79576E</u>
<u>30</u>	<u>51° 48.71252N</u>	<u>001° 42.79634E</u>
<u>31</u>	<u>51° 48.70751N</u>	<u>001° 42.79654E</u>
<u>32</u>	<u>51° 48.70246N</u>	<u>001° 42.79632E</u>
<u>33</u>	<u>51° 48.69742N</u>	<u>001° 42.79576E</u>
<u>34</u>	<u>51° 48.61790N</u>	<u>001° 42.78554E</u>
<u>35</u>	<u>51° 48.58695N</u>	<u>001° 42.78167E</u>
<u>36</u>	<u>51° 48.57932N</u>	<u>001° 42.78155E</u>
<u>37</u>	<u>51° 48.51798N</u>	<u>001° 42.78057E</u>
<u>38</u>	<u>51° 48.49747N</u>	<u>001° 42.78025E</u>
<u>39</u>	<u>51° 48.49537N</u>	<u>001° 42.78021E</u>
<u>40</u>	<u>51° 48.44900N</u>	<u>001° 42.77947E</u>
<u>41</u>	<u>51° 48.37184N</u>	<u>001° 42.77338E</u>
<u>42</u>	<u>51° 48.36482N</u>	<u>001° 42.77282E</u>
<u>43</u>	<u>51° 48.36309N</u>	<u>001° 42.77269E</u>
<u>44</u>	<u>51° 48.36148N</u>	<u>001° 42.77256E</u>
<u>45</u>	<u>51° 48.35849N</u>	<u>001° 42.77232E</u>
<u>46</u>	<u>51° 48.35989N</u>	<u>001° 42.77198E</u>

DEEMED MARINE LICENCE UNDER THE 2009 ACT –
TRANSMISSION ASSETS (OFFSHORE CONVERTER PLATFORM)

PART 1

LICENSED MARINE ACTIVITIES

~~161.1~~1—(1) In this licence—

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

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

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

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

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

“authorised development” means Work No. 2(b) as described in paragraph 3 of Part 1 of this marine licence or any stage of that work;

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

“cable circuits” means a number of electrical conductors necessary to transmit electricity between two points, comprising one or more conductors which may be bundled as one cable or take the form of separate cables, and in either case the circuit may include one or more auxiliary cables for the purpose of control, monitoring, protection or general communication;

“cable crossings” means a crossing of existing cables, pipelines or other existing infrastructure by cable circuits authorised by this Order together with cable protection;

“cable protection” means physical measures for the protection of cables including but not limited to concrete mattresses, split pipe system, and/or rock placement (including material used for cable crossings);

“cable protection replenishment” means the restoration to a former level or condition of cable protection lost by natural seabed processes or human activity;

“commence” means the first carrying out of any licensed marine activities authorised by this marine licence, save for pre-construction surveys and monitoring approved under this marine licence and the activities set out in paragraph 2(e), and “commenced” and “commencement” must be construed accordingly;

“commissioning” means the process of assuring that all systems and components of the authorised development are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker;

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

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation – Safeguarding, St George’s House, DIO Head Office, DMS Whittington, Lichfield, Staffordshire, WS14 9PY and any successor body to its functions;

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- (a) 2004 c. 20.
(b) 2008 c. 29.
(c) 2009 c. 23.
(d) S.I. 2017/13.

“Defra” means the Department for Environment, Food and Rural Affairs;

“dropped object procedure form” means the MMO notification proforma with reference MLDIR1 for reporting the loss or dumping of synthetic materials and other refuse at sea or any other format advised in writing by the MMO;

“emergency response co-operation plan” means the plan approved by the MCA [containing](#) the arrangements for liaison between the undertaker and HM Coastguard in the event of an emergency response;

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

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order under article 41 (certification of plans and documents, etc.);

“habitats of principal importance” means a habitat designated as being of principal importance in accordance with section 41 (biodiversity lists and action (England)) of the Natural Environment and Rural Communities Act 2006(a);

“IHO S44ed5 Order 1a” means order 1a from the fifth edition of the International Hydrographic Organisation’s Standards for Hydrographic Surveys as updated or amended from time to time;

“jacket foundation” means a lattice type structure constructed of steel and additional equipment such as, J-tubes, corrosion protection systems and access platforms attached to the seabed;

“JNCC” means the Joint Nature Conservation Committee;

“Kingfisher 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;

“Kingfisher Information Service” means the information service from non-departmental government body Seafish;

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

“lighting and marking plan” means the lighting and marking plan to be submitted to the MMO under condition 21(1)(i) of this licence;

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace (including replenishment of cable protection) to the extent assessed in the environmental statement, and “maintenance” must be construed accordingly;

“Marine Management Organisation” or “MMO” means the Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH who is the body created under the 2009 Act and who is responsible for the monitoring and enforcement of this licence;

“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;

“MCA” means the Maritime and Coastguard Agency, ~~an executive agency of the Department for Transport~~;

“MGN654” means “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes, as may be updated or amended from time to time;

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

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

(a) 2006 c. 16.

~~“monopile gravity base structures” means a structure principally of steel, concrete, or steel and concrete with a base which tapers as it rises which rests on the seabed due to its own weight with or without added ballast or additional skirts and associated equipment including J-tubes (or equivalent structures), corrosion protection systems and access platform(s) and equipment;~~

“offshore converter platform” means a structure above MHWS and attached to the seabed by means of a foundation, with equipment to convert three-phase HVAC power generated by the wind turbine generators into HVDC power;

“the offshore Order limits plan” means the plan certified as the offshore Order limits plan by the Secretary of State for the purposes of the Order under article 41 (certification of plans and documents, etc.);

“offshore platform” means the offshore substation platform(s) and/or the offshore converter platform authorised by this licence;

“Offshore Renewables Protocol for Reporting Archaeological Discoveries” means the Offshore Renewables Protocol for Reporting Archaeological Discoveries, the Crown Estate (2014), Protocol for Archaeological Discoveries: Offshore Renewables Projects, Salisbury, Wessex Archaeology as amended, updated or superseded from time to time;

“offshore substation platform” means a structure, authorised by the deemed marine licence in Schedule 9 to the Order, above MHWS and attached to the seabed by means of a foundation, with one or more decks, whether open or fully clad, accommodating electrical power transformers switchgear, instrumentation, protection and control systems, 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;

“operation” means the undertaking of the licensed activities which are not part of the construction, commissioning or decommissioning of the authorised development;

“Order” means the North Falls Offshore Wind Farm Order 202[];

“the Order limits” means the limits shown on the works plans within which the authorised development may be carried out, the grid coordinates for the area seaward of MHWS are set out in paragraph 5 of Part 1 of this licence;

“outline fisheries liaison and co-existence plan” means the document certified as the outline fisheries liaison and co-existence plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline marine mammal mitigation protocol” means the document certified as the outline marine mammal mitigation protocol by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

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

“outline offshore in-principle monitoring plan” means the document certified as the outline offshore in-principle monitoring plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline offshore written scheme of investigation” means the document certified as the outline offshore written scheme of investigation by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline project environmental management plan” means the document certified as the outline project environmental management plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline site integrity plan for the southern north sea special area of conservation” means the document certified as the outline site integrity plan for the southern north sea special area of

conservation by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“outline vessel traffic monitoring plan” means the document certified as the outline vessel traffic monitoring plan by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“pin piled jacket” means a jacket attached to the seabed using pin piles;

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

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

“SNCB” means the statutory nature conservation body, being the appropriate nature conservation body as defined in Regulation 5 of the Conservation of Habitats and Species Regulations 2017(a) or its equivalent in the 2017 Regulations;

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

“suction caisson (or bucket)” means a steel cylindrical structure attached to the legs of a jacket foundation which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

“suction caisson jacket” means a jacket attached to the seabed using suction caissons (typically one per leg);

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

“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;

“UK Standard Marking Schedule for Offshore Installations” means the Standard Marking Schedule for Offshore Installations published by the Department of Energy & Climate Change with reference DECC 04/11;

“undertaker” means, subject to article 5 (benefit of the Order), North Falls Offshore Wind Farm Limited (company number 12435947) ~~and having its registered address at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, United Kingdom, SN5 6PB;~~;

“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, authorised by the deemed marine licence in Schedule 8 to the Order, comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s) (or equivalent structures), 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, and radar equipment, fixed to a foundation or transition piece;~~

“working day” means a day which is not a weekend, bank holiday or public holiday in England; and

(a) S.I. 2017/1012.

“works plans (offshore)” means the plan or plans certified as the works plans (offshore) by the Secretary of State for the purposes of the Order under article 41 (certification of plans and documents, etc.).

(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;
- (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) Civil Aviation Authority

Aviation House
Beehive Ring Road
Crawley
West Sussex
RH6 0YR

(b) Historic England

East of England Regional Office
Brooklands
24 Brooklands Avenue
Cambridge
CB2 8BU

(c) Marine Management Organisation

Marine Licensing Team
Lancaster House Hampshire Court
Newcastle Business Park
Newcastle upon Tyne
NE4 7YH
Tel: 0300 123 1032;

(d) Marine Management Organisation (Local Office)

~~Miranda House~~

~~The Quay~~

~~Harwich~~

~~CO12 3HH~~

[Pakefield Road](#)

[Lowestoft](#)

[NR33 0HT](#)

[Tel: 0208 026 0654](#)

(e) Maritime and Coastguard Agency

Navigation Safety Branch
Bay 2/20, Spring Place
105 Commercial Road
Southampton

SO15 1EG

Tel: 020 3817 2433;

- (f) Ministry of Defence (as represented by Defence Infrastructure Organisation – Safeguarding)

St George's House

153

DIO Head Office

DMS Whittington

Lichfield

Staffordshire

WS14 9PY;

- (g) Natural England

Guildbourne House

Chatsworth Road

Worthing

BN11 1LD

Tel: 0300 060 4911;

- (h) Trinity House

Tower Hill

London

EC3N 4DH

Tel: 020 7481 6900;

- (i) The United Kingdom Hydrographic Office

Admiralty Way

Taunton

Somerset

TA1 2DN

Tel: 01823 337 900.

(5) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is marine.consents@marinemanagement.org.uk, or where contact to the Local Office if the MMO is required, harwich@marinemanagement.org.uk.

(6) Unless otherwise advised in writing by the MMO, the Marine Case Management System ("MCMS") must be used for all licence returns or applications to vary this licence. The MCMS address is: <https://marinelicensing.marinemanagement.org.uk/>.

Details of licensed marine activities

~~162.2.~~ Subject to the licence conditions in Part 2, this licence authorises the undertaker (and any agent or contractor acting on its behalf) to carry out the following licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act—

- (a) the deposit at sea within the Order limits seaward of MHWS of the substances and articles specified in paragraph 4 below and in Work No. 2(b) of up to 19,242.3 cubic metres (being a maximum, not an approximate upper figure) of inert material of natural origin produced during construction drilling or seabed preparation for foundation works;
- (b) the construction of works in or over the sea, and or on or under the seabed;
- (c) dredging for the purposes of seabed preparation for foundation works, preparation for construction vessels and/or electrical circuit works;

- (d) boulder clearance works by displacement ploughing or subsea grab technique or any other equivalent method;
- (e) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation;
- (f) removal of static fishing equipment;
- (g) wet storage; and
- (h) site preparation works.

163.3. Such activities described in paragraph 2 are authorised in relation to the construction, maintenance and operation of—

Work No. 2(b)—up to one offshore converter platform fixed to the seabed by one of the following foundation types: monopile, ~~gravity base system~~, multi-leg pin pile jacket or multi-leg suction bucket jacket.

In connection with Work No. 2(b) and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence, including—

- (a) scour protection around the foundations of the offshore converter platform;
- (b) the removal of material from the seabed required for the construction of Work No. 2(b);
- (c) temporary landing places, moorings or other means of accommodating or anchoring vessels in the construction and/or maintenance of the authorised development and buoys.

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

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

165.5. The grid coordinates within which that part of the authorised development comprising Work No. 2(b) must be located are specified below and more particularly on the offshore Order limits and grid coordinates plan—

(1) Point ID	(2) Latitude (WGS84 (DDM))	(3) Longitude (WGS84 (DDM))
36	51° 46.18399'N	01° 51.52207'E
37	51° 46.45215'N	01° 51.46739'E
38	51° 47.79417'N	01° 56.0602'E
39	51° 45.96006'N	01° 54.98406'E
40	51° 44.20008'N	01° 56.16270'E
41	51° 43.43466'N	01° 58.08954'E
42	51° 44.92260'N	02° 02.79174'E
43	51° 44.20590'N	02° 02.65992'E

44	51° 44.16756'N	02° 02.36766'E
45	51° 43.89822'N	02° 01.62702'E
46	51° 43.70418'N	02° 01.18500'E
47	51° 43.46172'N	02° 00.54066'E
48	51° 42.90816'N	01° 59.73738'E
49	51° 42.25464'N	01° 58.18482'E
50	51° 41.80842'N	01° 58.22082'E
51	51° 38.66118'N	01° 54.67986'E
52	51° 37.76189'N	01° 52.32853'E
53	51° 39.03140'N	01° 52.10085'E
54	51° 40.08359'N	01° 52.71647'E
55	51° 40.32461'N	01° 52.55921'E
56	51° 40.41888'N	01° 52.66356'E
57	51° 40.36970'N	01° 52.53295'E
58	51° 40.36967'N	01° 52.52982'E
59	51° 40.80925'N	01° 52.24298'E
60	51° 41.18441'N	01° 51.71421'E
61	51° 41.78502'N	01° 51.60623'E
62	51° 45.61162'N	01° 51.61163'E

General provisions

~~166.6.~~ This marine licence remains in force until the authorised development has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 (approval of decommissioning programmes) of the 2004 Act, including any modification to the programme under section 108 (reviews and revisions of decommissioning programmes) of the 2004 Act, and the completion of such programme has been confirmed by the Secretary of State in writing.

~~167.7.~~ The provisions of section 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this marine licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 5 (benefit of the Order).

~~168.8.~~ With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

~~169.9.~~ Any amendments to or variations from the approved details, plan or scheme must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the MMO that it is unlikely to give rise to any materially new or materially greater environmental effects from those assessed in the environmental statement.

PART 2 CONDITIONS

Design parameters

~~170.10.~~—(1) The dimensions of the offshore converter platform forming part of the authorised development (including cranes and helideck) must not exceed—

- (a) 111.~~6~~62 metres in height when measured from MHWS;
- (b) 130 metres in length; and
- (c) 10,400 m² topside area.

(2) Offshore converter platform foundation structures forming part of the authorised development must be one of either monopile foundation, ~~gravity base system foundation~~, multi-leg pin pile jacket foundation or multi-leg suction bucket jacket foundation.

(3) No offshore converter platform—

(a) jacket foundation employing pin piles forming part of the authorised development may—

(i) have a pin pile diameter of greater than 3.5 metres; and

(ii) employ more than 12 pin piles per jacket foundation; and

(b) monopile foundation forming part of the authorised development may not have a diameter greater than 17 metres.

~~171.11~~11—(1) The total number of offshore platforms constructed under this licence and the licence granted under Schedule 9 of the Order must not exceed two.

(2) The total permanent seabed footprint area for offshore platform foundations must not exceed—

(a) ~~6,637~~5,890 square metres excluding scour protection; and

(b) ~~174,184~~166,715 square metres including scour protection.

(3) The total volume of scour protection material for the offshore platform foundations is ~~326,776~~50,316 cubic metres.

Maintenance of the authorised development

~~172.12~~12—(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 provide otherwise.

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

(a) repair, maintenance, refurbishment and replacement of offshore electrical components;

(b) painting and applying other coatings;

(c) bird waste and marine growth removal;

(d) cable remedial burial;

(e) cable repairs and replacement;

(f) cable protection replenishment;

(g) access ladder and boat landing replacement;

(h) replacement of offshore platform anodes; and

(i) J-tube repair/replacement.

(3) In undertaking activities under paragraph (2)(f), the undertaker must not reduce water depth by more than 5% unless agreed with the MMO in writing.

(4) An operations and maintenance plan substantially in accordance with the outline offshore operations and maintenance plan shall be submitted to the MMO for approval in consultation with the relevant SNCB at least six months prior to the commencement of operations. All operation and maintenance activities shall be carried out in accordance with the approved plan.

Vessels under the undertaker's control

~~173.13~~13—(1) The undertaker must issue to operators of vessels under its control operating within the Order limits a code of conduct to prevent collision risk or injury to marine mammals which must be in accordance with the outline project environmental management plan.

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

Extension of time periods

~~174.~~14. Any time period given in this licence given to either the undertaker or the MMO may be extended with the agreement of the other party in writing such agreement not to be unreasonably withheld or delayed.

Notifications and inspections

~~175.~~15.—(1) The undertaker must ensure that—

- (a) a copy of this marine licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with condition 23; and
 - (ii) the masters and offshore operations managers responsible for the vessels notified to the MMO in accordance with condition 23;
- (b) within 28 days of receipt of a copy of this marine licence and any subsequent variations to it those persons referred to in sub-paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this marine licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 23 are permitted to carry out the licensed activities.

(3) The documents referred to in paragraph (1)(a) must 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 and at the office of any offshore operations managers with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The undertaker must ensure that a copy of this marine licence and any subsequent revisions or amendments has been read and understood by the masters of any vessel being used to carry on any licensed activity set out in condition 24(3), and that a copy of this marine licence is held on board any such vessel.

(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 development.

(6) The undertaker must inform the MMO Local Office in writing at least five days prior to the commencement of the licensed activities and within five days of the completion of the licensed activity.

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

- (a) at least fourteen days prior to the commencement of offshore activities, for inclusion in the Kingfisher Bulletin and offshore hazard awareness data; and
- (b) as soon as reasonably practicable, and in any event no later than 24 hours after completion of construction of all offshore activities, confirmation of notification must be provided to the MMO in writing within five days.

(8) The undertaker must ensure that a local notification to mariners is issued at least 14 days prior to the commencement of the authorised development or any relevant stage advising of the start date of Work No. 2(b) and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO, MCA and UK Hydrographic Office within five days of issue.

(9) The undertaker must ensure that local notifications to mariners are updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and the notices must be supplemented with VHF radio broadcasts agreed with the MCA in accordance with the project environmental management plan approved under deemed marine licence condition 21(1)(d) and monitoring plan approved under condition 21(1)(f). Copies of all local notifications must be provided to the MMO and UK Hydrographic Office within five days of issue, save for in the case of a notice relating to operations and maintenance, which must be provided within 24 hours of issue.

(10) The undertaker must notify the UK Hydrographic Office of the commencement of the licenced activities and completion of the licenced activities within 14 days and must make such notifications to the UK Hydrographic Office of the progress of the licenced activities as are reasonably required in order that all necessary amendments to nautical and aeronautical charts are made and the undertaker must send a copy of such notifications to the MMO and MCA within five days of the notification.

(11) In case of damage to, or destruction or decay of, the authorised development seaward of MHWS or any part thereof, excluding the exposure of cables, the undertaker must as soon as reasonably practicable and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify the MMO, the [MMO Local Office](#), the MCA, Trinity House, the Kingfisher Information Service and the UK Hydrographic Office.

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

(13) The undertaker must notify the MMO in writing a minimum of five days in advance of the commencement of each discrete incident of cable repair, replacement, or protection replenishment activity. Such a notification must include proposed timings and a description of proposed methodologies.

(14) The undertaker must ensure that the MMO, the MMO Local Office, local mariners, local fishermen's organisations and the Source Data Receipt Team at the UK Hydrographic Office, Taunton, Somerset, TA1 2DN (sdr@ukho.gov.uk) are notified within five days of completion of each instance of cable repair, replacement or protection replenishment activity.

Aids to navigation

~~176-16~~—(1) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning of the authorised development seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

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

- (a) notice of commencement of construction of the authorised development 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 development.

(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 lighting and marking plan agreed pursuant to condition 21(1)(a)(i) using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning of the authorised development seaward of MHWS notify Trinity House and the MMO in writing 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 15(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.

(6) Any jack up barges or vessels utilised during the licensed activities, when jacked up, must exhibit signals in accordance with the UK Standard Marking Schedule for Offshore Installations.

Colouring of structures

~~177.~~17. The undertaker must colour offshore converter platform structure 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.

Aviation safety

~~178.~~18.—(1) The undertaker must exhibit such lights, with such shape, colour and character as are required in writing by The Air Navigation Order 2016^(a) and determined necessary for aviation safety in consultation with the Defence Infrastructure Organisation Safeguarding and as directed by the Civil Aviation Authority. Lighting installed specifically to meet Ministry of Defence aviation safety requirements must remain operational for the life of the authorised development unless otherwise agreed in writing with the Ministry of Defence.

(2) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, the Civil Aviation Authority and the MMO, at least 14 days prior to the commencement of the licensed activities, in writing of the following information—

- (a) the date of the commencement of the licensed activities;
- (b) the date the offshore converter platform is to be installed;
- (c) the maximum height of any construction equipment or vessels to be used;
- (d) the maximum heights of the offshore converter platform to be constructed (including any antennae);
- (e) the latitude and longitude of the offshore converter platform to be constructed,

and the Defence Infrastructure Organisation Safeguarding and the Civil Aviation Authority must be notified of any changes to the information supplied under this paragraph of this condition and of the completion of the construction of the authorised development. Copies of notifications must be provided to the MMO.

Chemicals, drilling and debris

~~179.~~19.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised development 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^(b) (as amended) as maintained by the Centre for Environment, Fisheries and Aquaculture Science.

(2) The undertaker must ensure that any coatings and/or treatments are suitable for use in the marine environment and are used in accordance with relevant 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 15 February each year for the

(a) S.I. 2016/765.

(b) S.I. 2002/1355.

months August to January inclusive, and by 15 August 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, vessels or cables and drilling mud is disposed of within the Order limits seaward of MHWS.

(6) The undertaker must ensure that any rock material used in the construction of the authorised development 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 development is misplaced or lost below MHWS, the undertaker must report the loss to the MMO Local Office in writing within 48 hours of becoming aware of it and if the MMO, in consultation with the MCA and Trinity House, 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 at its own expense.

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

(9) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported in writing to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under condition 21(1)(d)(i).

(10) All dropped objects within the Order limits must be reported to the MMO using the dropped object procedure form as soon as reasonably practicable following 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

~~180.20.~~^{181.21.}—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life and/or of the vessel is threatened (an “unauthorised deposit”), within 48 hours full details of the circumstances of the deposit must be notified to the MMO in the manner provided in condition 19(10).

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

Pre-construction plans and documentation

~~181.21.~~^{181.21.}—(1) The licensed activities for each stage of construction of the authorised development must not commence until the following (insofar as relevant to that activity or stage of activity) has been submitted to and approved in writing by the MMO, in consultation with, where relevant, Trinity House, the MCA, UK Hydrographic Office and relevant SNCB—

- (a) A design plan at a scale of between 1:25,000 and 1:50,000, or in such other format as may be appropriate, including detailed representation on the most suitably scaled chart, to ensure conformity of the description of Work No. 2(b) and compliance with conditions 10, 11 and 12, which shows for the relevant stage—
 - (i) the proposed location, including grid co-ordinates of the centre point of the proposed location for the offshore converter platform, subject to any micro-siting required due to anthropological constraints, environmental constraints or difficult ground conditions discovered post approval under this condition and choice of foundation types for all offshore platforms;
 - (ii) the dimensions of the offshore converter platform to be installed, including any antennae;

- (iii) the type and dimensions of all foundations for the offshore substation platform;
 - (iv) the proposed layout of the offshore substation platform including any exclusion zones identified under paragraph (2)(d); and
 - (v) any exclusion zones or micro-siting requirements identified in any mitigation plan pursuant to paragraph (2)(d) or relating to any habitats of principal importance identified as part of surveys undertaken in accordance with condition 25;
- (b) a construction programme to include details of—
 - (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant delivery of materials and installation works; and
 - (iii) an indicative written construction programme for the offshore converter platform comprised in the works at paragraphs 2 and 3 of Part 1 (licensed marine activities) of this Schedule (insofar as not shown in paragraph (ii) above),
unless otherwise agreed in writing with the MMO;
- (c) a construction method statement in accordance with the construction methods assessed in the environmental statement and including details for the relevant stage of—
 - (i) foundation installation methodology, including drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation and cable installation works and having regard to any mitigation scheme pursuant to sub-paragraph (g);
 - (ii) contractors; and
 - (iii) associated ancillary works.
- (d) a project environmental management plan covering the period of construction for the relevant stage to include details of—
 - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with and report any spills and collision incidents of the authorised development in relation to all activities carried out;
 - (ii) a chemical risk register to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) a marine biosecurity plan detailing how the risk of introduction and spread of invasive non-native species will be minimised; and
 - (iv) waste management and disposal arrangements.
- (e) a scour protection plan for the relevant stage providing details of the need, type, sources, quantity and installation methods for scour protection, which must be updated and resubmitted in writing for approval if changes to it are proposed following cable laying operations;
- (f) details of proposed pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting in accordance with conditions 25, 26 and 27;
- (g) in the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol for that stage, in accordance with the outline marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, including details of soft start procedures with specified duration periods following current best practice as advised by the relevant SNCB;
- (h) a cable specification and installation plan for the relevant stage, to include—
 - (i) technical specification of offshore cables (including fibre optic cable) below MHWS within that stage, including a desk-based assessment of attenuation of electromagnetic field strengths, shielding and cable burial depth in accordance with good industry practice;

- (ii) a detailed cable laying plan for the Order limits within that stage, incorporating a burial risk assessment encompassing the identification of any cable protection that exceeds 5% of navigable depth referenced to Chart Datum and, in the event that any area of cable protection exceeding 5% of navigable depth is identified, details of any steps (to be determined following consultation with the MCA and Trinity House) to be taken to ensure existing and future safe navigation is not compromised or similar such assessment to ascertain suitable burial depths and cable laying techniques, including cable protection;
- (iii) proposals for the volume and areas of cable protection to be used for each cable crossing, and proposals for timing and methodology for reporting on actual volumes and areas post construction; and
- (iv) proposals for monitoring offshore cables including cable protection during the operational lifetime of the authorised development which includes a risk based approach to the management of unburied or shallow buried cables;
- (i) a lighting and marking plan to be agreed in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of condition 16 relating to that stage for the lifetime of the authorised development;
- (j) an offshore monitoring plan for the relevant stage which accords with the principles set out in the outline offshore in-principle monitoring plan;
- (k) a fisheries liaison and co-existence plan for the relevant stage which accords with the principles set out in the outline fisheries liaison and co-existence plan;
- (l) a vessel traffic monitoring plan for the relevant stage which accords with the principles set out in the outline vessel traffic monitoring plan;
- (m) in the event that driven or part-driven pile foundations are proposed to be used, a site integrity plan for the southern north sea special area of conservation which accords with the principles set out in the outline site integrity plan for the southern north sea special area of conservation; and
- ~~(n) a navigation and installation plan for the relevant stage which accords with the principles set out in the outline navigation and installation plan.~~

(2) Subject to paragraph (3), the licensed activities or any relevant stage of those activities must not commence unless no later than six months prior to the commencement a marine written scheme of archaeological investigation for the stage in construction has been submitted to and approved by the MMO in writing, in accordance with the outline offshore written scheme of investigation, and in accordance with industry good practice, in consultation with the statutory historic body to include—

- (a) details of responsibilities of the undertaker, archaeological consultant and contractor;
- (b) a method statement for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
- (c) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within six months of any survey being completed;
- (d) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones prior to construction;
- (e) monitoring of archaeological exclusion zones during and post construction, including provision of a report on such monitoring;
- (f) 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 development, 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;

- (g) a reporting and recording protocol, designed in reference to the Offshore Renewables Protocol for Reporting Archaeological Discoveries as set out by the Crown Estate and reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised development; and
- (h) 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.

(3) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a method statement produced under the written scheme of investigation specific to the relevant pre-construction activities (which must accord with the details set out in the outline offshore written scheme of investigation) which has been submitted to and approved by the MMO in consultation with the statutory historic body.

(4) In the event that driven or part-driven pile foundations are proposed to be used, the hammer energy used to drive or part-drive monopile foundations must not exceed 6,000kJ and the hammer energy used to drive or part-drive pin pile foundations must not exceed 3,000kJ.

(5) No more than two main vessels may be engaged at any time in activities related to piling for the licenced activities. There will only be a maximum installation of three monopiles foundations or six pin piles within a 24-hour period.

~~(6) The licensed activities or any part of those activities must not commence until a fisheries co-existence and liaison plan in accordance with the outline fisheries co-existence and liaison plan has been submitted to and approved by the MMO in writing.~~

~~(7)~~(6) The undertaker must, before submitting any pre-construction plans and documentation required under this condition, provide a copy of the plans and documentation to any person to whom part of the benefit of the Order applying seaward of MHWS has been transferred or leased pursuant to article 5 (benefit of the order) of the Order.

~~(8)~~(7) A person receiving the plans and documents under paragraph (6) must provide any comments on the plans and documentation to the undertaker within 14 days of receipt.

~~(9)~~(8) The undertaker must participate in liaison meetings as requested from time to time by the MMO in writing in advance and must consider such matters as are determined by the MMO relating to the efficient operation of a deemed marine licence issued under this Order (including as varied or transferred).

~~182.22~~—(1) Except where otherwise stated or agreed in writing with the MMO, each programme, statement, plan, protocol or scheme required to be approved under condition 21 (save for that required under condition 21(1)(f)) must be submitted for approval at least six months prior to the intended commencement of the relevant stage of the licensed activities.

(2) The pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting required under condition 21(1)(f) must be submitted in accordance with the following, unless otherwise agreed in writing with the MMO—

- (a) at least six months prior to the first survey of the relevant stage, detail of any pre-construction surveys and an outline of all proposed monitoring;
- (b) at least six months prior to construction, detail on construction monitoring; and
- (c) at least six months prior to commissioning, detail of postconstruction (and operational) monitoring.

(3) The MMO must determine an application for approval made under condition 21 within a period of six months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker such agreement not to be unreasonably withheld or delayed.

(4) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 21, unless otherwise agreed in writing by the MMO.

(5) The plans, protocols, statements, schemes and details submitted under condition 21 must ensure that any residual effects fall within the scope of those predicted in the environmental statement.

Offshore safety management

~~183.23~~23—(1) No stage of the authorised development may commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate to the authorised development contained within MGN654.

(2) No stage of the authorised development may commence until the MMO, in consultation with the MCA, has confirmed in writing that an emergency response co-operation plan has been prepared by the undertaker.

Reporting of engaged agents, contractors and vessels

~~184.24~~24—(1) The undertaker must provide the following information to the MMO—

- (a) the name, company number, address and function of any agent, contractor or subcontractor appointed to engage in the licensed activities not less than ten working days prior to such agent or contractor commencing any licensed activity; and
- (b) each week during the construction of the authorised development a list of the vessels currently and to be used in relation to the licensed activities, including the master's name, vessel type, vessel IMO number and vessel owner or operating company.

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

(3) The undertaker must notify the MMO in writing not less than 24 hours prior to the commencement of major component exchanges, ladder replacements or cable related works—

- (a) any agents, contractors or subcontractors that will carry out such works; and
- (b) any vessel proposed to be used for such works, including the master's name, vessel type, vessel IMO number and vessel owner or operating company.

Pre-construction monitoring and surveys

~~185.25~~25—(1) The undertaker must in discharging condition 21(1)(f) for construction submit a monitoring plan in accordance with the outline offshore in-principle monitoring plan for written approval by the MMO in consultation with the relevant SNCB, which must contain details of proposed surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report and—

- (a) the survey proposals must be in accordance with the principles set out in the outline offshore in-principle monitoring plan and 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 preconstruction position, with any limitations, and must make clear what postconstruction comparison is intended and the justification for this being required.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, the pre-construction survey proposals must comprise, in outline—

- (a) a full sea floor coverage swath-bathymetry survey of the Order limits and a buffer outside, that meets the requirements of IHO S44ed5 Order 1a, to—
 - (i) determine the location, extent and composition of any biogenic or geogenic reef features, as set out within the outline offshore in-principle monitoring plan;

- (ii) inform future navigation risk assessments as part of the cable specification and installation plan; and
 - (iii) inform the identification of any archaeological exclusion zone and post consent monitoring of any such archaeological exclusion zone;
 - (b) a bathymetric survey that meets the requirements of IHO S44ed5 Order 1a of the area within the Order Limits within which it is proposed to carry out construction works.
- (3) The pre-construction survey(s) carried out pursuant to paragraphs (2)(a)(ii) and (2)(b) must fulfil the requirements of MGN654 and its supporting 'Hydrographic Guidelines for Offshore Renewable Energy Developer' (as relevant).
- (4) The undertaker must carry out the surveys specified within the approved monitoring plan or plans in accordance with that plan or plans, unless otherwise agreed in writing by the MMO in consultation with the relevant SNCB.
- (5) Following completion of a survey carried out pursuant to this condition and prior to construction of the relevant stage, the undertaker must provide a report and full density data of the survey outcomes to the MMO, the relevant SNCB, the MCA and UK Hydrographic Office as relevant.

Construction monitoring

~~186-26~~—(1) The undertaker must, in discharging condition 21(1)(f) in respect of construction monitoring, submit a construction monitoring plan or plans for that stage in accordance with the outline offshore in-principle monitoring plan for written approval by the MMO in consultation with the relevant SNCB, which must include details of any proposed construction monitoring, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in accordance with the principles set out in the outline offshore in-principle monitoring plan and must specify the objectives of each survey and explain how the survey will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) If the plan or plans submitted to the MMO under this condition contain survey proposals, the construction monitoring plan must include, in outline—

- (a) vessel traffic monitoring by automatic identification system for the duration of the construction period, with provision for a report to be submitted to the MMO, Trinity House, and the MCA annually during the construction period for the authorised development; and
- (b) where piled foundations are to be employed, unless otherwise agreed by the MMO in writing, details of proposed monitoring of the noise generated by the installation of the first four piled foundations of each piled foundation type to be constructed collectively under this licence and the deemed marine licences granted under Schedules 8 and 9 of the Order.

(3) If, in the reasonable opinion of the MMO in consultation with the SNCB the monitoring carried out pursuant to condition 26(2)(b) above shows impacts significantly in excess to those assessed in the environmental statement and there has been a failure of the mitigations set out in the marine mammal mitigation protocol, all piling activity must cease until either contingency measures approved within the marine management mitigation protocol have been implemented or an update to the marine mammal mitigation protocol and further monitoring requirements have been agreed.

~~(3)~~(4) The undertaker must carry out the surveys specified within the approved construction monitoring plan or plans in accordance with that plan or plans, unless otherwise agreed in writing by the MMO in consultation with the relevant SNCB.

Post-construction monitoring

~~187-27~~—(1) The undertaker must, in discharging condition 21(1)(f) in respect of post-construction monitoring, submit a post-construction monitoring plan or plans for that stage in accordance with the outline offshore in-principle monitoring plan for written approval by the MMO in consultation with the relevant SNCB including details of proposed post-construction surveys, including methodologies (including appropriate buffers, where relevant) and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in accordance with the principles set out in the outline offshore in-principle monitoring plan and must specify the objectives for each survey and explain how the survey will assist in either informing a useful and valid comparison with the preconstruction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) If the plan or plans submitted to the MMO under this condition contain survey proposals, the post-construction survey plan or plans must include, in outline—

- (a) details of a survey to determine any change in the location, extent and composition of any biogenic or geogenic reef feature identified in the pre-construction survey in the parts of the offshore Order limits in which construction works were carried out. The survey design must be informed by the results of the pre-construction benthic survey;
- (b) a bathymetric survey to monitor the effectiveness of archaeological exclusion zones. The data will be analysed by an accredited archaeologist as defined in the marine written scheme of archaeological investigation required under condition 21(2); and
- (c) vessel traffic monitoring by automatic identification system for a duration of three consecutive years following the completion of construction of the authorised development, unless otherwise agreed in writing by the MMO, with provision for a report to be submitted annually to the MMO, Trinity House, and the MCA.

(3) The undertaker must carry out the surveys specified within the post-construction monitoring plan or plans in accordance with that plan or plans and provide the agreed reports in the agreed format, unless otherwise agreed in writing with the MMO in consultation with the relevant SNCB.

(4) Within 12 weeks of completion of any cable repair or replacement works, the undertaker must undertake a post installation survey along the section of cable that has undergone repair or replacement to demonstrate the successful burial of the cable, and submit a report to the MMO in writing on its findings.

Timing of monitoring report

~~188-28~~ Any monitoring report compiled in accordance with the monitoring plans provided under conditions 25, 26 and 27 must be provided to the relevant body no later than four months following receipt by the undertaker of the results of monitoring to which it relates, unless otherwise agreed with the relevant body in writing.

Reporting of impact pile driving

~~189-29~~—(1) In the event that driven or part-driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the marine noise registry—

- (a) prior to the commencement of each stage of construction of the licensed activities, information on the expected location, start and end dates of impact pile driving to satisfy the marine noise registry's Forward Look requirements;
- (b) at six month intervals following the commencement of pile driving, information on the locations and dates of impact pile driving to satisfy the marine noise registry's Close Out requirements; and
- (c) within 12 weeks of completion of impact pile driving, information on the locations and dates of impact pile driving to satisfy the marine noise registry's Close Out requirements.

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

(3) For the purpose of this condition, “Forward Look” and “Close Out” mean the requirements as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) as amended, updated or superseded from time to time.

Maintenance reporting

~~190.30~~30—(1) An annual maintenance report must be submitted to the MMO in writing within one month following the first anniversary of the date of commencement of operations, and every year thereafter until the permanent cessation of operation.

(2) The report must provide a record of the licensed activities as set out in condition 12 during the preceding year, the timing of activities and methodologies used.

(3) Every fifth year, the undertaker must submit to the MMO in writing, within one month of that date, a consolidated maintenance report, which will—

- (a) include a review of licensed activities undertaken during the preceding five years with reference to the reports submitted in accordance with paragraph (1) of this licence;
- (b) reconfirm the applicability of the methodologies and frequencies of the licensable activities permitted by this licence for the remaining duration of this licence.

Stages of construction

~~191.31~~31—(1) The licenced activities must not be commenced until a written scheme setting out the stages of construction of the authorised development seaward of MHWS has been submitted to and approved by the MMO in writing.

(2) The scheme must be implemented as approved.

(3) The written scheme referred to in sub-paragraph (1) must be submitted to the MMO in writing four months prior to the planned commencement of the licenced activities.

Completion of construction

~~192.32~~32—(1) The undertaker must submit a close out report in writing to the MMO and the relevant SNCB within three months of the date of completion of construction. The close out report must confirm the date of completion of construction.

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

~~193.33~~33. The undertaker must submit a close out report to the MCA and the UK Hydrographic Office within three months of the date of completion of construction. The close out report must confirm the date of completion of construction and must include the following—

- (a) a plan of the layout of installed offshore converter platform; and
- (b) latitude and longitude coordinates of the centre point of the location of the offshore converter platform, provided as Geographical Information System data referenced to WGS84 datum.

SCHEDULE 11

HEDGEROWS

Article 39

PART 1

REMOVAL OF HEDGEROWS

<i>(1)</i> <i>Extent of and purpose for removal</i>	<i>(2)</i> <i>Location of hedgerow</i>
small scale removal for haul road crossing	between points 3a and 3b on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 10c and 10d on the tree preservation order and hedgerow plan
removal for trenched crossing	between points 10i and 10j on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 12a and 12b on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 12c and 12d on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 12e and 12f on the tree preservation order and hedgerow plan

PART 2

REMOVAL OF IMPORTANT HEDGEROWS

<i>(1)</i> <i>Extent of and purpose for removal</i>	<i>(2)</i> <i>Location of hedgerow</i>
small scale removal for haul road crossing	between points 1b and 1c on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 2a and 2b on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 3c and 3d on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 4a and 4b on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 4c and 4d on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 5c and 5d on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 6a and 6b on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 6c and 6d on the tree preservation order and hedgerow plan
removal for trenched crossing	between points 6e and 6f on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 6g and 6h on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 6i and 6j on the tree preservation order and hedgerow plan

removal for trenched crossing	between points 6k and 6l on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 7a and 7b on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 7c and 7d on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 7e and 7f on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 7g and 7h on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 7i and 7j on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 7k and 7l on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 7m and 7n on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 7u and 7v on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 7w and 7x on the tree preservation order and hedgerow plan
removal for trenched crossing	between points 8a and 8b on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 8g and 8h on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 8k and 8l on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 8m and 8n on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 8s and 8t on the tree preservation order and hedgerow plan
removal for trenched crossing	between points 8u and 8v on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 9c and 9d on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 10a and 10b on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 10o and 10p on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 12g and 12h on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 13e and 13f on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 13o and 13p on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 13x and 13y on the tree preservation order and hedgerow plan
small scale removal for haul road crossing	between points 14a and 14b on the tree preservation order and hedgerow plan

SCHEDULE 12

DOCUMENTS TO BE CERTIFIED

Article 41

PART 1

DOCUMENTS FORMING THE ENVIRONMENTAL STATEMENT TO BE CERTIFIED

~~194.1.~~ 1. The following documents are included in the list referred to in article 41—

(1) <i>Document Number</i>	(2) <i>Examination Library Reference</i>	(3) <i>Name</i>	(4) <i>Version</i>	(5) <i>Date</i>
3.1.1. <u>1</u>	<u>AS-008</u>	Non Technical Summary	Revision A <u>1</u>	July <u>October</u> 2024
3.1.2	<u>APP-014</u>	Chapter 0 - Glossary	Revision A <u>0</u>	July 2024
3.1.3	<u>APP-015</u>	Chapter 1 - Introduction	Revision A <u>0</u>	July 2024
3.1.4	<u>APP-016</u>	Chapter 2 - Need for the Project	Revision A <u>0</u>	July 2024
3.1.5	<u>APP-017</u>	Chapter 3 - Policy and Legislative Context	Revision A <u>0</u>	July 2024
3.1.6	<u>APP-018</u>	Chapter 4 - Site Selection and Assessment of Alternatives	Revision A <u>0</u>	July 2024
3.1.7	<u>APP-019</u>	Chapter 5 - Project Description	Revision A <u>0</u>	July 2024
3.1.8	<u>APP-020</u>	Chapter 6 - EIA Methodology	Revision A <u>0</u>	July 2024
3.1.9	<u>APP-021</u>	Chapter 7 - Technical Consultation	Revision A <u>0</u>	July 2024
3.1.10	<u>APP-022</u>	Chapter 8 - Marine Geology, Oceanography and Physical Processes	Revision A <u>0</u>	July 2024
3.1.11	<u>APP-023</u>	Chapter 9 - Marine Water and Sediment Quality	Revision A <u>0</u>	July 2024
3.1.12	<u>APP-024</u>	Chapter 10 - Benthic and Intertidal Ecology	Revision A <u>0</u>	July 2024
3.1.13	<u>APP-025</u>	Chapter 11 - Fish	Revision A <u>0</u>	July 2024

			and Shellfish Ecology		
3.1.14	<u>APP-026</u>	Chapter 12 - Marine Mammals	Revision A <u>0</u>	July 2024	
3.1.15	<u>APP-027</u>	Chapter 13 - Offshore Ornithology	Revision A <u>0</u>	July 2024	
3.1.16	<u>APP-028</u>	Chapter 14 - Commercial Fisheries	Revision A <u>0</u>	July 2024	
3.1.17	<u>APP-029</u>	Chapter 15 - Shipping and Navigation	Revision A <u>0</u>	July 2024	
3.1.18	<u>APP-030</u>	Chapter 16 - Offshore and Intertidal Archaeology and Cultural Heritage	Revision A <u>0</u>	July 2024	
3.1.19	<u>APP-031</u>	Chapter 17 - Aviation and Radar	Revision A <u>0</u>	July 2024	
3.1.20	<u>APP-032</u>	Chapter 18 - Infrastructure and Other Users	Revision A <u>0</u>	July 2024	
3.1.21	<u>APP-033</u>	Chapter 19 - Ground Conditions and Contamination	Revision A <u>0</u>	July 2024	
3.1.22	<u>APP-034</u>	Chapter 20 - Onshore Air Quality	Revision A <u>0</u>	July 2024	
3.1.23	<u>APP-035</u>	Chapter 21 - Water Resources and Flood Risk	Revision A <u>0</u>	July 2024	
3.1.24	<u>APP-036</u>	Chapter 22 - Land Use and Agriculture	Revision A <u>0</u>	July 2024	
3.1.25	<u>APP-037</u>	Chapter 23 - Onshore Ecology	Revision A <u>0</u>	July 2024	
3.1.26	<u>APP-038</u>	Chapter 24 - Onshore Ornithology	Revision A <u>0</u>	July 2024	
3.1.27	<u>APP-039</u>	Chapter 25 - Onshore Archaeology and Cultural Heritage	Revision A <u>0</u>	July 2024	
3.1.28	<u>APP-040</u>	Chapter 26 - Noise and Vibration	Revision A <u>0</u>	July 2024	
3.1.29	<u>APP-041</u>	Chapter 27 - Traffic and Transport	Revision A <u>0</u>	July 2024	
3.1.30	<u>APP-042</u>	Chapter 28 - Human Health	Revision A <u>0</u>	July 2024	
3.1.31	<u>APP-043</u>	Chapter 29 -	Revision A <u>0</u>	July 2024	

3.1.32	APP-044	Seascape, Landscape and Visual Impact Assessment Chapter 30 - Landscape and Visual Impact Assessment	Revision A0	July 2024
3.1.33.1	AS-010	Chapter 31 - Socio-economics	Revision A1	July October 2024
3.1.34	APP-046	Chapter 32 - Tourism and Recreation	Revision A0	July 2024
3.1.35	APP-047	Chapter 33 - Climate Change	Revision A0	July 2024
3.1.36.1	AS-013	Chapter 34 - Major Accidents and Disasters	Revision A1	July October 2024

PART 2

EXAMINATION DOCUMENTS FORMING PART OF THE ENVIRONMENTAL STATEMENT TO BE CERTIFIED

~~195-2~~ [3](#). The following documents are included in the list referred to in article 41—

(1) <i>Document Number</i>	(2) <i>Examination Library Reference</i>	(3) <i>Name</i>	(4) <i>Version</i>	(5) <i>Date</i>
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PART 3

OTHER DOCUMENTS TO BE CERTIFIED

~~196-3~~ [3](#). The following documents are included in the list referred to in article 41—

(1) <i>Document Number</i>	(2) <i>Examination Library Reference</i>	(3) <i>Name</i>	(4) <i>Version</i>	(5) <i>Date</i>
5.1	APP-196	location plan (onshore)	Revision A0	July 2024
5.2	APP-197	location plan (offshore)	Revision A0	July 2024
5.3.1	AS-018	land plans	Revision A1	July October 2024
5.4	APP-199	Crown land plan	Revision A0	July 2024
5.5	APP-200	special category land plan	Revision A0	July 2024

5.6.1	AS-019	works plans (onshore)	Revision A1	July October 2024
5.7.1	AS-020	works plans (offshore)	Revision A1	July October 2024
5.8	APP-203	offshore order limits and boundary co ordinates plan	Revision A0	July 2024
5.9.1	AS-021	access to works plan	Revision A1	July October 2024
5.10	APP-205	streets plan	Revision A0	July 2024
5.11	APP-206	public rights of way plan	Revision A0	July 2024
5.12	APP-207	tree preservation order and hedgerow plan	Revision A0	July 2024
5.19		temporary traffic regulation order plan	Revision A1	July February 2024
6.3		book of reference	Revision A2	July February 2024
7.2.2.1		LBBG compensation document implem entation and monitoring plan	Revision A1	July February 2024
7.6	APP-241	outline project environmental management plan	Revision A0	July 2024
7.7	APP-242	draft marine mammal mitigation protocol	Revision A0	July 2024
7.8	APP-243	outline site integrity plan for the southern north sea special area of conservation	Revision A0	July 2024
7.9	APP-244	outline fisheries liaison and coexistence plan	Revision A0	July 2024
7.10	APP-245	offshore in principle monitoring plan	Revision A0	July 2024
7.11		outline offshore written scheme of investigation	Revision A1	July February 2024
7.12	APP-247	outline onshore written scheme of investigation	Revision A0	July 2024
7.13		outline code of construction practice	Revision A1	July February 2024
7.14		outline landscape	Revision A1	July

		and ecological management strategy		2024 February 2025
7.15		outline horizontal directional drill method statement and contingency plan	Revision A 1	July 2024 February 2025
7.16		outline construction traffic management plan	Revision A 1	July 2024 February 2025
7.17	APP-252	outline public rights of way management plan	Revision A 0	July 2024
7.18	APP-253	outline skills and employment plan	Revision A 0	July 2024
7.19	APP-254	outline operational drainage strategy	Revision A 0	July 2024
7.20	APP-255	outline offshore operations and maintenance plan	Revision A 0	July 2024
7.21	APP-256	outline vessel traffic monitoring plan	Revision A 0	July 2024
7.22	APP-257	biodiversity net gain strategy	Revision A 0	July 2024
7.24	APP-259	outline navigation and installation plan	Revision A 0	July 2024
[]		archaeological mitigation strategy	[]	[]

SCHEDULE 13

ARBITRATION RULES

Article 42

Primary objective

~~197.1~~1—(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within four months from the date the arbitrator is appointed pursuant to article 42 (arbitration) of the Order.

(2) The parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the parties. Any dispute which is not resolved amicably by the senior management of the parties within twenty working days of the dispute arising, or such longer period as agreed in writing by the parties, will be subject to arbitration in accordance with the terms of this Schedule.

(3) 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

~~198.2~~2—(1) All time periods in these arbitration rules will be measured in working days and this will exclude weekends and bank holidays.

(2) Time periods will be calculated from the day after the arbitrator is appointed which will be either—

- (a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the Secretary of State.

Timetable

~~199.3~~3—(1) The timetable for the arbitration will be that set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 15 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

- (a) a written statement of claim which describes the nature of the difference between the parties, the legal and factual issues, the claimant’s contentions as to those issues, and the remedy it is seeking; and
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 15 days of receipt of the claimant’s statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with—

- (a) a written statement of defence responding to the claimant’s statement of claim, its statement in respect of the nature of the difference, the legal and factual issues in the claimant’s claim, its acceptance of any element(s) of the claimant’s claim, its contentions as to those element(s) 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; and
- (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 five 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 difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the respondent's submissions;
- (c) any expert report in response to the respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and
- (e) its written submissions in response to the legal and factual issues involved.

Procedure

~~200-4~~—(1) The arbitrator will make an award on the substantive difference 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.

(2) 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.

(3) Within five 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.

(4) Within ten days of the arbitrator advising the parties that he 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 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.

(5) 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.

(6) There will be no process of examination and cross-examination of experts, but the arbitrator will 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 20 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 ten days of the issues being provided; and
- (c) the form and content of a joint report will be as directed by the arbitrator and must be provided at least five days before the hearing.

(7) Within ten 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 will take these submissions into account in the award.

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

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

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

Arbitrator's powers

~~201.5~~⁵—(1) The arbitrator has all the powers of the Arbitration Act 1996^(a), including the non-mandatory sections, save where modified by these rules.

(2) There will be no discovery or disclosure, except that the arbitrator has the power to order the parties to produce such documents as are reasonably requested by another party no later than the statement of reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders 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/or procedure—

- (a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then; and
- (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

~~202.6~~⁶—(1) The costs of the arbitration will include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Subject to sub-paragraph (3), the arbitrator will award recoverable costs on the general principle that each party should bear its own costs.

(3) The arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as defined within the National Planning Practice Guidance or such other guidance as may replace it.

Confidentiality

~~203.7~~⁷—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation will be confidential and will only be publicly disclosed where required by law or with the agreement of both parties.

(2) The arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) Nothing in this paragraph prevents any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.

(a) 1996 c. 23.

SCHEDULE 14

PROTECTIVE PROVISIONS

Article 47

PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

~~204~~1. The provisions of this Part have effect for the protection of utility undertakers referred to in this part of this Schedule (save for any utility undertakers which are specifically protected by any other Part of this Schedule, which will take precedence), unless otherwise agreed in writing between the undertaker and the utility undertaker in question.

~~205~~2. In this Part—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989^(a)), belonging to or maintained by that licence holder;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by that gas transporter within the meaning of Part 1 of the Gas Act 1986^(b) for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term, mains, pipes or other apparatus belonging to or maintained by that water undertaker for the purposes of water supply; and
- (d) in the case of a utility undertaker within paragraph (d) of the definition of that term—
 - (i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991^(c); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewerage disposal works, at future date) of that Act^(d),

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) 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;

“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;

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

(a) 1989 c. 29.

(b) 1986 c. 44.

(c) 1991 c. 56.

(d) Section 104 was amended by section 42(3) of the Flood and Water Management Act 2010 (c.29).

“utility undertaker” means—

- ~~(e)~~(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- ~~(f)~~(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- ~~(g)~~(c) a water undertaker within the meaning of the Water Industry Act 1991; and
- ~~(h)~~(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the onshore works, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

On street apparatus and offshore works

~~206~~3. This Part does not apply to—

- (a) apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) the offshore works.

Acquisition of land

~~207~~4. Regardless of any provision of this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

~~208~~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 or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of a utility 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 utility undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days’ 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 a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility 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 utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use 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 must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to the utility 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.

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

Facilities and rights for alternative apparatus

~~209-6~~—(1) Where, in accordance with the provisions of this Part, the undertaker affords to a utility 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 must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along the authorised development, the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus that may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised project for which the alternative apparatus is to be substituted.

(3) 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 utility 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 must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

~~210-7~~—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order 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 utility 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 utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility 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, the provisions of this Part 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 instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan 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.

Expenses and costs

211.8—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses agreed with the undertaker in advance and reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

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

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

- (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 undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary then, if such placing involves cost in the construction of works under this Part 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 utility undertaker in question by virtue of sub-paragraph (1) must 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 must 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 must 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 a utility 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 7 years and 6 months earlier so as to confer on the utility 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.

212.9—(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 a utility undertaker, or there is

any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Miscellaneous

~~213.10~~ Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

~~214.11~~ The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and the operator in question.

~~215.12~~ In this Part—

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

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

“the electronic communications code” has the same meaning as in section 106(b) (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure 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;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 (infrastructure system) of that code; and

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

(a) 2003 c. 21.

(b) Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).

~~216.13.~~ The exercise of the powers conferred by article 33 (statutory undertakers) are subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic communications code.

~~217.14.~~—(1) Subject to sub-paragraphs (2) to (4), if as a result of the authorised development or its construction, or of any subsidence resulting from the authorised development—

- (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 the authorised development), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost agreed by the undertaker in advance and reasonably incurred by the operator in making good such damage or restoring the supply and must make reasonable compensation to that operator for any loss sustained by it, and must indemnify the operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, that 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 must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part must be referred to and settled by arbitration under article 42 (arbitration).

(5) This Part 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 (street works in England and Wales) 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 project.

(6) Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

~~218.15.~~ The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

~~219.16.~~ In this Part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” shall be construed accordingly;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment, Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the channel;

“plans” includes sections, drawings, specifications, calculations and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work involving a tidal main river or 8m of a drainage work involving a non-tidal main river, or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery;
- (d) affect the conservation, distribution or use of water resources; or
- (e) affect the conservation value of the main river and habitats in its immediate vicinity; and

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

220.17—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 26.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

221.18. Without limiting paragraph 17, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of any specified work.

222.19—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 18, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part; and
- (b) to the reasonable satisfaction of the Agency, and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days’ notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 24, if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (4) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice, and any expenditure incurred by the Agency in so doing shall be recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 26.

~~223-20~~—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (4) and paragraph 24, if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any expenditure incurred by the Agency in so doing shall be recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these Protective Provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency shall not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 26.

(6) This paragraph does not apply to drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so.

~~224-21~~. Subject to paragraph 24, if by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made

good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

~~225-22.~~ If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of the undertaker becoming aware of such obstruction.

~~226-23.~~—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 24, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing shall be recoverable from the undertaker.

(4) Subject to paragraph 24, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

~~227-24.~~ The undertaker shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may incur—

- (a) in the examination or approval of plans under this Part;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

~~228-25.~~—(1) The undertaker is responsible for and shall indemnify the Agency against all costs and losses not otherwise provided for in this Part which may be reasonably incurred or suffered by the Agency by reason of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised works or the failure of any such works comprised within them; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised works or dealing with any failure of the authorised works.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—

- (a) expenses and charges;
- (b) staff costs and overheads;
- (c) legal costs;

“losses” includes physical damage.

(3) The undertaker shall indemnify the Agency against all liabilities, claims and demands arising out of or in connection with the authorised works or otherwise out of the matters referred to in sub-paragraph (1)(a) and (1)(b).

(4) For the avoidance of doubt, in sub-paragraph (3)—

“claims” and “demands” include as applicable—

(a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand; and

(b) any interest element of sums claimed or demanded;

“liabilities” includes—

~~(e)~~(a) contractual liabilities;

~~(f)~~(b) tortious liabilities (including liabilities for negligence or nuisance);

~~(e)~~(c) liabilities to pay statutory compensation or for breach of statutory duty;

~~(f)~~(d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise shall be made without the agreement of the undertaker which agreement shall not be unreasonably withheld or delayed.

(6) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the undertaker from any liability under the provisions of this Part.

~~229-26.~~ Any dispute arising between the undertaker and the Agency under this Part shall, if the parties agree, be determined by arbitration under article 42 (arbitration), but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Energy Security and Net Zero or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 4

FOR THE PROTECTION OF DRAINAGE AUTHORITIES

~~230-27.~~ The provisions of this Part have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

~~231-28.~~ In this Part of this Schedule—

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” is to be construed accordingly;

“drainage authority” means in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(a);

“drainage work” means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse which is the responsibility of the drainage authority;

“independent review” means a review carried out by a third party confirming the findings of the undertaker in the assessment of the impact of the proposed specified work on flood risk;

“ordinary watercourse” has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

(a) 1991 c. 59.

“plans” includes any information reasonably required by the drainage authority including location details, grid references, sections, drawings, specifications, assessments and method statements; and

“specified work” means so much of any work or operation authorised by this Order as is in, on, under over or within 9 metres of a drainage work and which comprises any of the following works carried out in relation to or which may affect any ordinary watercourse—

- (a) the erection of any mill, dam, weir, or other similar obstruction to the flow of an ordinary watercourse, or raising or otherwise altering any such obstruction;
- (b) the construction or installation of a bridge or other structure;
- (c) the erection of a culvert in an ordinary watercourse;
- (d) the alteration of an ordinary watercourse or a culvert or other form of drainage infrastructure in a manner that would be likely to affect the flow of an ordinary watercourse.

~~232.~~29.—(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work, including an independent review and such further particulars available to it as the drainage authority may within 14 days of the submission of the plans reasonably request.

(2) The undertaker must not commence construction of the specified work until approval, unconditionally or conditionally, has been given as provided in this paragraph.

(3) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 38.

(4) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 56 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work, for the protection of any ordinary watercourse or for the prevention of flooding.

(5) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

~~233.~~30. Without limiting paragraph 29, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage by reason of any specified work; or
- (b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased, by reason of any specified work.

~~234.~~31.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 30, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the drainage authority, and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the date of completion.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work to which the protective works relate.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is agreed, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(5) Subject to sub-paragraph (5) and paragraphs 35 and 36, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any reasonable expenditure incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 38.

~~235.32~~—(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of the specified work maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation on land held by the undertaker for the purpose of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of the work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) Subject to sub-paragraph (4) and paragraphs 35 and 36, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is reasonably necessary for such compliance and may recover any reasonable expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 41.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and

- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

~~236-33.~~ Subject to paragraphs 35 and 36 paragraph 32(5)(b), if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker any expenditure reasonably incurred by the drainage authority in so doing from the undertaker.

~~237-34.~~ If by reason of the construction of the specified work the drainage authority's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the drainage authority to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of the undertaker becoming aware of such obstruction.

~~238-35.~~ The undertaker must make reasonable compensation for costs, charges and expenses which the drainage authority may reasonably incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the drainage authority under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified works.

~~239-36.~~ Without limiting the other provisions of this Part, the undertaker must make reasonable compensation to the drainage authority from costs and losses which may be reasonably incurred or suffered by the drainage authority by reason of—

- (a) any damage to any drainage work;
- (b) any raising or lowering of the water table in land adjoining the authorised project or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such lands,

caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the specified work.

~~240-37.~~ The drainage authority must at all times take reasonable steps to prevent and mitigate any claims, demands, proceedings, costs, damages, expenses or loss.

~~241-38.~~ The drainage authority must give to the undertaker reasonable notice of any such claim or demand. The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. No settlement or compromise may be made to such claim or any admission made which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

~~242-39.~~ The drainage authority must, at the request of the undertaker, afford all reasonable assistance for the purposes of contesting any such claim or action and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.

~~243-40.~~ The fact that any act or thing may have been done by the drainage authority on behalf of the undertaker or in accordance with a plan approved or deemed to have been approved by the drainage authority or in accordance with any requirement of the drainage authority or under its supervision does not, subject to paragraph 39, excuse the undertaker from liability under the provisions of paragraph 36 unless the drainage authority fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

~~244.~~41. Nothing in paragraph 36 imposes any liability on the undertaker with respect to any damage or loss to the extent that it is attributable to the act, neglect or default of the drainage authority, its officers, servants, contractors or agents.

~~245.~~42. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

~~246.~~43. Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 42 (arbitration), but otherwise is to be determined by the Secretary of State for Energy Security and Net Zero on a reference to them by the undertaker or the drainage authority, after notice in writing by one to the other.

PART 5

FOR THE PROTECTION OF NETWORK RAIL

~~247.~~44. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 50, of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

~~248.~~45. In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8(1)(licences) of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“protective works” means the underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused by the carrying out, maintenance or use of the authorised development;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

(a) 1993 c. 43.

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under—

~~(a)~~ (a) the Railways Act 1993;

~~(b)~~ (b) the network licence; and/or

~~(c)~~ (c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property, and for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 4 (power to maintain the authorised development) in respect of such works.

~~249.46.~~—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

(3) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(4) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act or article 33 (statutory undertakers) in relation to any right of access of Network Rail to railway property, but such right of access may be extinguished or diverted with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would directly result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway, in Network Rail’s reasonable opinion.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions including any conditions necessary to ensure operational or railway safety but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail’s absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

~~250.47.~~—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 42 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval, the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, subject to Network Rail seeking consent from the undertaker (such matters to be in the undertaker's absolute discretion) and if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the absolute satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in their reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the reasonable expense of the undertaker in either case without reasonable delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

(5) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to Network Rail notice as soon as is reasonably practicable, and in addition to that notice shall provide a plan, section and description of those works as soon as reasonably practicable subsequently.

~~251.48~~—(1) Any protective works to be constructed by virtue of paragraph 47(4) must, when commenced, be constructed—

- (a) without necessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 47;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and reasonable compensation for any loss which it may sustain by reason of any such damage, interference or obstruction but always excluding any consequential loss or indirect loss.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its employees, contractors or agents or any liability on Network Rail with respect of any damage,

costs, expenses or loss attributable to the negligence of the undertaker or its employees, contractors or agents.

~~252.~~49. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

~~253.~~50. Network Rail must at all times afford reasonable facilities to the undertaker and its employees, contractors or agents for access to any works carried out by Network Rail under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

~~254.~~51.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' written notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working, and when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed and provides its consent, (such matters to be in the undertaker's absolute discretion) Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 47(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and reasonable compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work provided that at all times Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 52(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

~~255.~~52. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 47(3) or in constructing any protective works under the provisions of paragraph 47(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by them of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, guards and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

~~256.53.~~ If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as that it adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

~~257.54.~~ The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

~~258.55.~~ Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

~~259.56.~~—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses (but always excluding any consequential or indirect loss) not otherwise provided for in this Part of this Schedule (subject to article 49 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the undertaker's construction, maintenance or operation of a specified work or the failure thereof;
- (b) by reason of any act or omission of the undertaker or of any person in its employment or of its contractors or others whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or any person in its employment or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others; and
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the construction or operation of the authorised development;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission, provided Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss.

(2) The fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under this Part.

(3) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker. Network Rail must take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(4) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(7) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a direct result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

~~260-57.~~ Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part (including the amount of the relevant costs reasonably incurred and mentioned in paragraph 56) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

~~261-58.~~ In the assessment of any sums payable to Network Rail under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

~~262-59.~~ The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

~~263-60.~~ Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

~~264-61.~~ The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 5 (benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

~~265.62.~~ The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 41 (certification of plans and documents, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the format reasonably specified by Network Rail.

~~266.63.~~ In relation to any dispute arising under this Part of this Schedule the provisions of article 42 (arbitration) do not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

PART 6

FOR THE PROTECTION OF NATIONAL HIGHWAYS

Application etc.,

~~267.64.~~ The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

Interpretation

~~268.65.~~—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2) the latter prevail.

(2) In this Part of this Schedule—

“as built information” means one electronic copy of the following information—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for any road work designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document, and for the cable works, showing the location and depth of the cable as installed and any ancillary or protective measures installed within the strategic road network;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) in so far as it is relevant to the road works and cable works, the health and safety file; and
- (l) such other information as is reasonably required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway’s Asset Data Management Manual as is in operation at the relevant time.

“cable works” means any works under this Order which consist of the installation of cables, cable ducts, tunnels for cables and cable ducts and related or associated works to those

operations under the strategic road network through the use of trenchless installation techniques where no works are required to or on the operational carriageway;

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the road works and cable works;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the works;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

“detailed design information” means such of the following drawings specifications and calculations as are relevant to the road works—

- ~~(m)~~(a) site clearance details;
- ~~(n)~~(b) boundary, environmental and mitigation fencing;
- ~~(o)~~(c) road restraints systems and supporting road restraint risk appraisal process assessment;
- ~~(p)~~(d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;
- ~~(q)~~(e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- ~~(r)~~(f) pavement, pavement foundations, kerbs, footways and paved areas;
- ~~(s)~~(g) traffic signs and road markings;
- ~~(t)~~(h) traffic signal equipment and associated signal phasing and timing detail;
- ~~(u)~~(i) road lighting (including columns and brackets);
- ~~(v)~~(j) regime of California Bearing Ratio testing;
- ~~(w)~~(k) electrical work for road lighting, traffic signs and signals;
- ~~(x)~~(l) motorway communications as required by DMRB;
- ~~(y)~~(m) highway structures and any required structural approval in principle;
- ~~(z)~~(n) landscaping;
- ~~(aa)~~(o) proposed departures from DMRB standards;
- ~~(bb)~~(p) walking, cycling and horse riding assessment and review report;
- ~~(cc)~~(q) stage 1 and stage 2 road safety audits and exceptions agreed;
- ~~(dd)~~(r) utilities diversions;
- ~~(ee)~~(s) topographical survey;
- ~~(ff)~~(t) other such information that may be required by National Highways to be used to inform the detailed design of the road works;
- ~~(gg)~~(u) the cable works;
- ~~(hh)~~(v) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- ~~(ii)~~(w) health and safety information including any asbestos survey required by GG105 or any successor document; and
- ~~(jj)~~(x) other such information that may be required by National Highways to be used to inform the detailed design of the cable works;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“final certificate” means the certificate relating to those aspects of the road works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 77;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the works as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of the cable works or road works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of either the cable works or the road works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 72 or 73 as appropriate when it considers the road works are substantially complete;

“road safety audit” means an audit carried out in accordance with the road safety audit standard;

“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

“road works” means so much of any work authorised by this Order which involve works to the carriageway or verge of any part of the strategic road network, or to operational assets ancillary thereto including highway drainage, and specifically including the alteration of a junction as authorised as part of Work No. 9 and including any maintenance of that work, as is on, in, or over the strategic road network for which National Highways is the highway authority;

“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority; and

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991.

(3) References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

General

~~269-66.~~ No works in carrying out, maintaining or diverting the cable works may be carried out under the strategic road network at a distance within 4 metres of the lowest point of the ground.

~~270-67.~~ References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

~~274.68.~~ If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Prior approvals

~~272.69.~~—(1) The road works must not commence until—

- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways (acting reasonably);
- (b) the programme of works has been approved by National Highways (acting reasonably);
- (c) the detailed design of the road works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways (acting reasonably)—
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);
 - (ii) details of the proposed road space bookings;
 - (iii) the identity and suitability of the contractor and nominated persons;
 - (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;
- (d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
- (e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(iv) above;
- (f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
- (g) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways (acting reasonably) from the contractor and designer of the road works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the roadworks, including in the selection of materials, goods, equipment and plant; and
- (h) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways reasonably considers will be affected by the road works, has been agreed in writing by National Highways.

(2) The cable works must not commence until—

- (a) the detailed design of the cable works including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification, has been submitted to and approved by National Highways; and
- (b) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways reasonably considers will be affected by the road works, has been agreed in writing by National Highways.

(3) National Highways must prior to the commencement of the cable works and road works inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1).

(4) Any approval of National Highways required under this paragraph—

- (a) must not be unreasonably withheld;

- (b) must be given in writing;
- (c) shall be deemed to have been given if neither given nor refused within 2 months of the receipt of the information for approval or where further particulars are requested by National Highways, within 2 months of receipt of the information to which the request for further particulars relates; and
- (d) may be subject to any conditions as National Highways acting reasonably considers necessary.

(5) Any change to the identity of the contractor and/or designer of the road works will be notified to National Highways immediately and details of their suitability to deliver the road works will be provided on request along with collateral warranties in a form agreed by National Highways.

(6) Any change to the detailed design of the road works must be approved by National Highways in accordance with paragraph (1) of this Part.

Construction of the cable works and road works

~~273.70~~—(1) The undertaker must give National Highways 14 days' notice in writing of the date on which the cable works and/or road works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' Road space booking procedures prior to and during the carrying out the roadworks and no road works for which a road space booking is required may commence without a road space booking having first been secured from National Highways.

(3) The cable works and road works must be carried out by the undertaker to the reasonable satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 69(1) or 69(2) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same.

(4) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the cable works and road works for the purposes of inspection and supervision of those works.

(5) If any part of the cable works or road works is constructed—

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the reasonable satisfaction of National Highways.

(6) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(7) In constructing the cable works and road works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the reasonable satisfaction of National Highways.

(8) The undertaker must notify National Highways if it fails to complete the road works in accordance with the agreed programme pursuant to paragraph 69(1)(b) of this Part or suspends the carrying out of any road work beyond 14 days and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

~~274.71~~—(1) The undertaker must pay to National Highways a sum equal to the whole of any reasonable costs and expenses which National Highways incurs (including costs and expenses for using internal or external staff) in relation to the cable works and road works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraphs 69(1) and 69(2);
- (b) the supervision of the cable works and road works;
- (c) the checking and approval of the information required to determine approvals under this Order;
- (d) all legal and administrative costs and disbursements reasonably incurred by National Highways in connection with sub-paragraphs (a) to (c) of this sub-paragraph; and
- (e) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) The undertaker must pay the NH costs to National Highways within 60 days of receipt of a properly issued VAT invoice from National Highways addressed to the undertaker, which invoice may be issued prior to the costs being incurred.

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the cable works and road works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified roadworks and in any event prior to National Highways incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 30 days of the date of receipt of a properly issued VAT invoice from National Highways addressed to the undertaker for the excess sum, the notice a sum equal to the excess.

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 30 days of the issue of the provisional certificate issued pursuant to paragraph 72(4).

(6) Within 30 days of the issue of the final account—

- (a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it;
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

Provisional Certificate for road works

~~275.72~~—(1) Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the road works, National Highways will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker

must comply with any requirements of National Highways prior to reopening the strategic road network.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the road works; and
- (b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

- (a) a stage 3 road safety audit for the road works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;
- (b) the road works incorporating the approved remedial works under sub-paragraph (a) and any further works notified to the undertaker pursuant to sub-paragraph (3)(b) have been completed to the satisfaction of National Highways; and
- (c) the as built information has been provided to National Highways.

National Highways must issue the provisional certificate.

(5) The undertaker must submit a stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.

Provisional Certificate for cable works

~~276-73~~²⁷⁷⁻⁷⁴—(1) As soon as the undertaker considers that the provisional certificate for the cable works may be properly issued it must apply to National Highways for the provisional certificate.

(2) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the area of the highway within the strategic road network over the route of the cable works; and
- (b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(3) When the cable works incorporating any further works notified to the undertaker pursuant to sub-paragraph (2)(b) have been completed to the satisfaction of National Highways, National Highways must issue the provisional certificate.

Opening

~~277-74~~²⁷⁸⁻⁷⁵ The undertaker must notify National Highways not less than 14 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 7 days of that date.

Final condition survey

~~278-75~~²⁷⁹⁻⁷⁶—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 72(2) or 73(1), arrange for any highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 for the cable works and any other works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to paragraph (1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to paragraph (1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing.

(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any cable work or road work following its completion that the undertaker may from time to time carry out.

Defects Period

~~279.76.~~ 76.—(1) The undertaker must at its own expense remedy any defects in the strategic road network resulting from the carrying out of the road works as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);
- (b) in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the expiry of the defects period National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

Final Certificate

~~280.77.~~ 77.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate for each of the cable works and road works.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the strategic road network; and
- (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.

(3) The undertaker must carry out such works notified to it pursuant to sub-paragraph (2).

(4) When National Highways is satisfied that—

- (a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph (2) and any remedial works required as a result of any relevant stage 4 road safety audit have been made good to the reasonable satisfaction of National Highways; and
- (b) the NH costs have been paid to National Highways in full;

National Highways must issue the final certificate.

(5) The undertaker must pay to National Highways within 30 days of the date of receipt of a properly issued VAT invoice from National Highways addressed to the undertaker, the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to these provisions.

Insurance

~~281.78~~ 282.79 Prior to the commencement of the cable works and road works the undertaker must effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) in respect of any one claim or series of claims arising from one event against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of the cable works or road works or use of the strategic road network by the undertaker.

Maintenance of the authorised development

~~282.79~~ 283.80—(1) The undertaker must, prior to the commencement of any works of maintenance to the specified cable works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the authorised development, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of any works for which a road space booking is required may commence without a road space booking having first been secured.

(3) The undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days' in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph 74 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Land

~~283.80~~ 284.81—(1) Following the issue of the final certificate pursuant to paragraph 77(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the road works.

(2) If the undertaker receives notice under sub-paragraph (1) then the undertaker must effect a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways.

Expert Determination

~~284.81~~ 285.82—(1) Article 42 (arbitration) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42 (arbitration).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

PART 7

FOR THE PROTECTION OF LONDON GATEWAY PORT

~~285.~~82. In this Part—

“cable specification and installation plan” means the cable specification and installation plan to be approved under condition 22(1)(h) of the deemed marine licence for the transmission assets in Schedule 9 (deemed marine licence under the 2009 Act – transmission assets);

“London Gateway” means London Gateway Port Limited, Company No. 04341592 as harbour authority for the London Gateway Port, forming part of the Port of London and situated at Corringham, Stanford-le-hope, SS17 9DY;

“London Gateway HEO” means London Gateway Port Harbour Empowerment Order 2008(a);

Application

~~286.~~83. The following provisions, unless otherwise agreed in writing between the undertaker and the London Gateway, have effect.

Approvals

~~287.~~84. The undertaker will obtain the approval in writing of London Gateway of the draft cable specification and installation plan (in so far as that plan relates to any area or areas of Work No. 3 which are within the jurisdiction of the London Gateway as described in the London Gateway HEO) before any application for approval of that plan is submitted by the undertaker in compliance with condition 22 of the deemed marine licence for the transmission assets in Schedule 9 (deemed marine licence under the 2009 Act – transmission assets).

~~288.~~85. The draft cable specification and installation plan referred to in paragraph 84 must set out for Work No. 3;

- (a) the proposed cable burial depth(s);
- (b) the proposed cable burial methods;
- (c) any cable protection proposed including type, volume and anticipated locations; and
- (d) the proposed programme of work for cable burial.

Approvals and refusals

~~289.~~86. London Gateway must issue any approval or refusal of a draft plan submitted to it in accordance with paragraph 84 within 28 days of the date of submission of that draft unless any other period is agreed with the undertaker.

(a) S.I. 2008/1261.

~~290.87.~~ All decisions of London Gateway under these provisions must be made acting reasonably.

~~291.88.~~ All decisions of London Gateway under these provisions must be issued in writing and the undertaker may provide a copy of any such decision to the Marine Management Organisation or any other regulatory body.

~~292.89.~~ Where London Gateway refuses to approve a draft plan it must provide reasons for refusal in writing to the undertaker at the same time as it issues the refusal.

~~293.90.~~ Where no decision is issued within the 28 day period set out in paragraph 86, the draft plan submitted will be deemed to be approved by London Gateway.

~~294.91.~~ Any difference or dispute arising between the undertaker and London Gateway must, unless otherwise agreed in writing between the undertaker and London Gateway, be determined by arbitration in accordance with article 42 (arbitration) of this Order.

PART 8

FOR THE PROTECTION OF FIVE ESTUARIES OFFSHORE WIND FARM LIMITED

~~295.92.~~ In this Part—

“apparatus” means any cables, ducts, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by Five Estuaries or any successor as developer or operator of any part of the Five Estuaries offshore wind farm development onshore grid connection together with any replacement apparatus, and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“Five Estuaries” means Five Estuaries Offshore Wind Farm Limited (and any successor in title, transferee and lessee, as the case may be) as the undertaker with the benefit of all or part of the Five Estuaries Offshore Wind Farm Order 202[];

Application

~~296.93.~~ This Part applies for the protection of Five Estuaries and the following provisions, unless otherwise agreed in writing between the undertaker and Five Estuaries, have effect.

~~297.94.~~ This Part ceases to have effect where in the event that Five Estuaries is granted a Development Consent Order by the Secretary of State, on the date upon which that order expires without the development authorised by it having been commenced.

Acquisition of land and protection of apparatus

~~298.95.~~ Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to this Order, the undertaker must not acquire any interest in land or any apparatus or override any easement or other interest of Five Estuaries otherwise than by agreement, such agreement not to be unreasonably withheld or delayed.

~~299.96.~~ If, in the exercise of the agreement reached in accordance with paragraph 93 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed and any right of Five Estuaries to maintain that apparatus in that land must not be extinguished.

~~300.97.~~—(1) Not less than 56 days (or such lesser period agreed by Five Estuaries, acting reasonably) before commencing the execution of any works authorised by the Order that are near to, or will or may affect any apparatus, the undertaker must submit to Five Estuaries a plan of such works.

(2) In relation to works which will or may be situated on, over, under or within five metres measured in any direction of any apparatus, or involve embankment works within 5 metres of any apparatus, the plan to be submitted to Five Estuaries under sub-paragraph (1) must be detailed including details of the materials and products to be used in the works and describing—

- (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, renewal, replacement or upgrade including details of excavation and positioning of plant;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) The undertaker must not commence the construction, renewal, replacement or upgrade of any works to which sub-paragraphs (1) or (2) apply until Five Estuaries has given written approval of the plan so submitted.

(4) Any approval of Five Estuaries required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
- (b) must not be unreasonably withheld or delayed.

(5) In relation to a work to which sub-paragraph (1) or (2) applies, Five Estuaries 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 within a period of 28 days beginning with the date on which the plan under sub-paragraph (1) is submitted to it (or such lesser period agreed by the statutory undertaker, acting reasonably). For the avoidance of doubt, provided that any further iterations of the plan submitted to Five Estuaries for approval as a result of modifications required under this paragraph are not materially different to the modifications previously requested by Five Estuaries, any further required modifications will be requested by Five Estuaries as soon as reasonably practicable thereafter and in any event within 21 days of receipt of any further plans.

(6) Works executed under this Order must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (2), as amended from time to time by agreement between the undertaker and Five Estuaries and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by Five Estuaries for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Five Estuaries is entitled to watch and inspect the execution of those works.

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works (unless otherwise agreed by Five Estuaries, acting reasonably), a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Five Estuaries notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5) and (6) insofar as is reasonably practicable in the circumstances.

Access

~~301.98~~ 98. If in consequence of the agreement reached in accordance with paragraph 93 or the powers granted under the Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as enables Five Estuaries to maintain or use the apparatus no less effectively than was possible before such obstruction.

Build option 2A scenario

~~302.99.~~^{99.}—(1) Where the undertaker determines to proceed with build option 2A and the parties intend for additional ducts to be installed as either or both of Work Nos. 6B and Work No. 12B to be transferred to Five Estuaries then—

(2) The undertaker will consult and agree with Five Estuaries on its detailed design and construction methodology, including means of access, before any application for discharge of requirements necessary to carry out either or both of Work Nos. 6B and 12B is made to the relevant planning authority.

(3) The undertaker will agree the route and specification of any permanent access to be used by both the undertaker and Five Estuaries prior to discharging any requirement for the detailed design of such accesses necessary to construct such access.

(4) Any agreement required under this paragraph must not be unreasonably withheld or delayed and any requests for amendment must have regard to the scope of the assessment set out in the Environmental Statement.

Collaboration

~~303.100.~~^{100.} The undertaker and Five Estuaries must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

Arbitration

~~304.101.~~^{101.} Any difference or dispute arising between the undertaker and Five Estuaries must, unless otherwise agreed in writing between the undertaker and Five Estuaries, be determined by arbitration in accordance with article 42 (arbitration) of the Order.

SCHEDULE 15

Article 51

COMPENSATION TO PROTECT THE COHERENCE OF THE NATIONAL SITE NETWORK

~~305.1~~ 1. In this Schedule—

“compensation measure” means breeding enhancement;

“LBBG” means lesser black backed gulls (*Larus fuscus*);

“LBBG CIMP” means the LBBG compensation implementation and monitoring plan to be developed in accordance with the Outline LBBG compensation document ~~CIMP~~;

~~“LBBG compensation document” means the document certified as the LBBG compensation document by the Secretary of State for the purposes of this Order under article (certification of plans and documents, etc.);~~

“OOEG” means the offshore ornithology engagement group; and

“strategic compensation fund” means any fund established by Defra or a Government body for the purpose of implementing strategic compensation measures.

~~306.2~~ 2—(1) The undertaker will form and administer the OOEG before carrying out any works to deliver the compensation measure under a LBBG CIMP to be approved under this Schedule. The undertaker will invite representatives from the following organisations to participate in the OOEG—

- (a) Marine Management Organisation;
- (b) ~~Natural England~~ the relevant SNCB;
- (c) the relevant planning authority; and
- (d) the Royal Society for the Protection of Birds.

(2) The OOEG must be convened and consulted on the proposed LBBG CIMP before any approval of the LBBG CIMP is sought by the undertaker under paragraph 3.

~~307.3~~ 3—(1) Unless the Secretary of State confirms in writing that the compensation measure has been delivered to his satisfaction, then the following details contained with in the LBBG CIMP, which must be in accordance with the Outline LBBG compensation document ~~CIMP~~, must be submitted to the Secretary of State for approval in consultation with ~~Natural England~~ the relevant SNCB and the relevant planning authority for the compensation measure prior to the commencement of Work No. 1.

(2) The LBBG CIMP must include—

- (a) details of the location(s) where the compensation measure will be delivered;
- (b) details of how any necessary land access rights, licences and approvals have or will be obtained and any biosecurity measures will be or have been secured;
- (c) an implementation timetable for delivery of the compensation measure;
- (d) details of monitoring and maintenance programmes,
- (e) success criteria;
- (f) survey and reporting programmes for LBBG and predators;
- (g) details of any adaptive management measures, with details of the factors used to trigger any such measures;
- (h) provision for reporting to the Secretary of State;
- (i) a plan for reporting to the OOEG and consulting the OOEG on the details of any proposed adaptive management measures and/or amendments to the LBBG CIMP;

- (j) provision for the option to be exercised by the undertaker, following consent in writing of the Secretary of State, to pay a contribution to the strategic compensation fund wholly or partly in substitution for the compensation measure or as an adaptive management measure for the purposes of paragraph (g). The sum of the contribution to be agreed between the undertaker and Defra or other Government body responsible for the operation of the strategic compensation fund in consultation with the OOEG;
- (k) provision for the option to be exercised by the undertaker, following consent in writing of the Secretary of State, to pay a financial contribution towards the establishment of compensation measures by another party wholly or partly in substitution for the compensation measure or as an adaptive management measure for the purposes of paragraph (g). The sum of the contribution to be agreed between the undertaker and the other party in consultation with the OOEG. The Secretary of State shall consult with the relevant statutory nature conservation body prior to granting consent in terms of this paragraph; and
- (l) provision for the option to be exercised by the undertaker, following consent in writing of the Secretary of State, to collaborate with another party in the delivery of compensation measures wholly or partly in substitution for the compensation measure or as an adaptive management measure for the purposes of paragraph (g). The Secretary of State shall consult with the relevant statutory nature conservation body prior to granting consent in terms of this paragraph.

308.4. The undertaker must carry out the compensation measure in accordance with the LBBG CIMP as approved by the Secretary of State in consultation with ~~Natural England~~ [the relevant SNCB](#) and the relevant planning authority, unless otherwise provided for in this Schedule.

309.5. No wind turbine generator forming part of Work No. 1 may commence operation until the compensation measure has been implemented for at least three breeding seasons, unless commencement of operation at an earlier date is approved in writing by the Secretary of State or unless otherwise provided for in this Schedule. For the purposes of this paragraph each breeding season is 1 April to 31 August of each year inclusive.

310.6. The undertaker must notify the Secretary of State of completion of implementation of the compensation measure, unless otherwise provided for in this Schedule.

311.7. The details approved under paragraph 3 include any amendments that may subsequently be approved in writing by the Secretary of State.

312.8. Where the compensation measure as approved in the LBBG CIMP includes the installation of predator control fencing, such fencing must be maintained by the undertaker (or at its expense) for the operational lifetime of the wind turbine generators erected under Work No. 1.

313.9. In the event of any conflict between the terms of this Order and the LBBG CIMP then the provisions of this Order shall prevail.

314.10. The undertaker shall not be required to implement the compensation measure to the extent that—

- (a) following consent of the Secretary of State, a contribution to the strategic compensation fund has been elected wholly in substitution for the compensation measure for the purposes of paragraph 3(2)(j);
- (b) following consent of the Secretary of State, a financial contribution towards the establishment of compensation measures by another party has been elected wholly in substitution for the compensation measure for the purposes of paragraph 3(2)(k); or
- (c) following consent of the Secretary of State, the undertaker has elected to collaborate with another party in the delivery of compensation measures wholly in substitution for the compensation measure for the purposes of paragraph 3(2)(l).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation and maintenance of an offshore wind farm generating station located approximately 40km from the coast of Essex, together with associated development. This Order imposes requirements in connection with the development and authorises the compulsory purchase of land (including rights in land) and the right to use land and to override easements and other rights.



NORTH FALLS

Offshore Wind Farm



RWE

HARNESSING THE POWER OF NORTH SEA WIND

North Falls Offshore Wind Farm Limited

A joint venture company owned equally by SSE Renewables and RWE.

To contact please email contact@northfallsoffshore.com

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North Falls Offshore Wind Farm Limited Registered Address: Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB, United Kingdom
Registered in England and Wales Company Number: 12435947

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