Outer Dowsing Offshore Wind

Equinor IPs' Response to Request for Information

dated 17 November 2025

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Glossary of Acronyms

DCO	Development Consent Order
DEP	Dudgeon Extension Project
DOW	Dudgeon Offshore Wind Farm
SEP	Sheringham Shoal Extension Project
SHS	Sheringham Shoal Offshore Wind Farm
SoS	Secretary of State for Energy Security and Net Zero

Glossary of Terms

The Applicant	GT R4 Ltd. The Applicant making the application for a DCO. The Applicant is GT R4 Limited (a joint venture between Corio Generation (and its affiliates), Total Energies and Gulf Energy Development (GULF)), trading as Outer Dowsing Offshore Wind. The Project is being developed by Corio Generation, TotalEnergies and GULF.
Dudgeon Offshore Wind Farm	The Dudgeon Offshore Wind Farm onshore and offshore sites including all onshore and offshore infrastructure.
Dudgeon Extension Project	The Dudgeon Extension Project offshore wind farm onshore and offshore sites including all onshore and offshore infrastructure.
Equinor IPs	Sheringham Shoal and Dudgeon Extensions ProjCo Limited (SSDEPL) (formerly Scira Extension Limited), Sheringham Shoal and Dudgeon Extensions HoldCo Limited (SSDEHL) (formerly Dudgeon Extension Limited), Dudgeon Offshore Wind Limited (DOWL), and Scira Offshore Energy Limited (SOEL)
The Project	Outer Dowsing Offshore Wind, an offshore wind generating station together with associated onshore and offshore infrastructure.
Sheringham Shoal Offshore Wind Farm	The Sheringham Shoal Offshore Wind Farm onshore and offshore sites including all onshore and offshore infrastructure.
Sheringham Shoal Extension Project	The Sheringham Shoal Extension Project offshore wind farm onshore and offshore sites including all onshore and offshore infrastructure.

1 Introduction

1.1 This submission is made on behalf of Scira Offshore Energy Limited, Dudgeon Offshore Wind Limited, Scira Extension Limited and Dudgeon Extension Limited (together the "Equinor IPs") in response to the Secretary of State's Request for Further Information ("RfI") dated 17th November 2025.

1.2 The Equinor IPs are statutory undertakers for the purposes of the Planning Act 2008, each holding a generation licence under the Electricity Act 1989. The Equinor IPs own and operate, or have the benefit of powers under development consent orders and associated deemed marine licences granted by government in respect of following offshore infrastructure:

1.2.1 the operational Sheringham Shoal Offshore Wind Farm ("SSOWF");

1.2.2 the operational Dudgeon Offshore Wind Farm ("DOWF");

1.2.3 the consented Sheringham Shoal Extension Project ("SEP"); and

1.2.4 the consented Dudgeon Extension Project ("DEP").

1.3 The Equinor IPs have made several submissions to the examination of the application for development consent for the Outer Dowsing Offshore Wind Farm ("the Project"), the purpose of which is to secure protection and compensation in respect of the economic loss arising from the impact on annual energy production ("AEP") at SSOWF, DOWF, SEP and DEP as a consequence of the operation of the proposed development due to wake effects.

1.4 The RfI seeks Interested Parties' comment on the information submitted by the Applicant in response to the consultation letter dated 10th October 2025 which includes The Applicant's Response to the Second Request for Information – Wake Effects (October 2025) (document reference 28.5) ("October Response").

1.5 It should be noted that the names of the SEP and DEP project companies have been updated as follows:

1.5.1 Scira Extension Limited's name has been changed to Sheringham Shoal and Dudgeon Extensions ProjCo Limited ("ProjCo"), and is now the sole undertaker under The Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 in respect of that Scheme and will be the contracting entity executing both SEP and DEP; and

1.5.2 Dudgeon Extension Limited's name has been changed to Sheringham Shoal and Dudgeon Extensions HoldCo Limited and is now the holding company that owns the Projco;

however for the purposes of consistency in submissions, the original names of all companies are retained.

2 Executive Summary

2.1 The Equinor IPs' position remains as stated in its Deadline 6 Submission and Wake Effects Position Statement1, and remains that protective provisions in the form submitted in September 20252 are the appropriate means to control the wake loss effects that are proven to impact the Equinor IPs' existing and proposed offshore infrastructure. The Applicant has not in its closing submissions, nor in its Responses to the Requests for Information – Wake Effects (April 2025 and October 2025), presented any effective or reasonable case otherwise.

2.2 In the Applicant's October Response[3] much is made of a perceived lack of engagement on the part of the Equinor IPs' on the substantive points made by the Applicant on wake loss issues, particularly relating to financial viability of SSOWF, DOWF, SEP and DEP, and that there is no basis in "*law, policy, precedent or evidence"* to include payment provisions (in the form of commuted sum) in protective provisions. Such statements are wholly inaccurate. The Equinor IPs have consistently presented evidence that (i) the proposed development will affect the viability of SSOWF, DOWF, SEP and DEL due to the impact of wake effects on AEP; (ii) the resultant economic loss is an important and relevant consideration for the purposes of section 104 of the Planning Act 2008 and through NPS EN-3 is an impact which warrants mitigation and compensation through the provisions of the DCO; and (iii) protective provisions are an established and precedented means of protecting existing statutory undertakings in the context of new development.

2.3 The Equinor IPs have submitted to the examination their Position Statement on Wake Effects (April 2025)[4] and Equinor IPs C1 and C3 submissions[5]. No comment was made directly in response to the Applicant's Deadline 6 Submissions on Wake Loss; first because the Secretary of State did not invite any such comment, and secondly because the Position Statement on Wake Loss very clearly sets out the Equinor IPs view on the matter.

2.4 In order to further substantiate their position, the Equinor IPs have sought the opinion of Leading Counsel ("Leading Counsel's Opinion") on the in-principal matters concerning the lawfulness of the proposed approach and the interpretation of policy raised in the Applicant's October Response. In summary, Leading Counsel's Opinion concludes:

2.4.1 That the Equinor IPs have submitted evidence that the impacts identified in the Wood Thilsted Report would affect the future viability of their assets, as the economic loss involved as a consequence of wake effects would be very substantial. The impact on future viability would arise both as a consequence of the loss itself and also the potential resultant earlier decommissioning.

2.4.2 Draft NPS EN-3 should be interpretated as meaning that compensation may be required for cases of wake loss but not necessarily in all cases. Applying case-law and the approach to decision making on other projects, in giving the future viability of affected projects "substantial weight" in the planning balance and the express requirements to seek to avoid or minimise economic loss, it is clear that compensation for economic loss may be required in any particular case.

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1 Doc Refs: REP6-142; REP6-143
2 C1-009
3 C3-028 28.5 The Applicant's Response to the Second Request for Information – Wake Effects
4 REP6-143
5 C1-009; C3-034 – Equinor IPs – Responses to Secretary of State Consultation 3 Part B

2.4.3 The Planning Act 2008 is clear that a DCO may include provision as to compensation (paragraph 36 of Schedule 5). It is an established fact that such provision may be made through protective provisions. It is also appropriate that provision for compensation may be made by a requirement[6].

2.4.4 If a framework for assessment and payment of compensation is not agreed between the parties, and it is shown that the viability of an existing wind farm may be impacted (which the Secretary of State is required to give "substantial weight" in the decision making process), it follows that there is a clear case for expressly addressing compensation for wake loss in the DCO. If no provision is made in the DCO the Secretary of State cannot assume that impacts on viability will be resolved between the parties.

2.4.5 Early decommissioning is an effect on future viability and assuming this finding is accepted in the case of the Equinor IPs, then in the absence of agreement between the parties, and without a provision in the DCO there is an effect on the future viability of the Equinor IP interests and assets which can only be mitigated with certainty through provision in the DCO.

2.4.6 The use of a requirement through the DCO imposes a useful check on wake effects, but does not ultimately provide clarity on how the impact will be resolved. It also does not address compensation. It is clear that the use of protective provisions can provide for payment of compensation (this is well precedented). A further advantage is that protective provisions can be enforced directly between parties, can be modified through agreement, and (in the event of dispute) can be resolved through any applicable arbitration provision without the Secretary of State involvement.

2.4.7 The absence of precedent for protective provisions in the case of wake effects in particular is not important. There has not been any decision of the Secretary of State which has rejected the use of protective provisions, and would have to therefore be distinguished. There is established precedent in protective provisions for payment of compensation for economic loss where there is no clear cut route to compensation under the statutory compensation code.

A copy of Leading Counsel's Opinion is attached at Appendix 4.

2.5 There is no benefit in reiterating the submissions put into the Examination[7] – however in order to assist the Secretary of State, Appendix 1 cross references the evidential basis upon which Equinor has addressed the justification for protective provisions (including payment of commuted sum for loss in energy yield) in law, policy and precedent as a balanced and fair means to address wake loss effects throughout the Examination. Appendix 2 sets out the policy and precedent for the draft protective provisions submitted to the Examination, and explains how they are in practice the appropriate and proportionate approach, in line with policy.

2.6 Notably, the Applicant is incorrect in its October Response in stating that:

6 Opinion of Richard Turney KC on Wake Effects (Appendix 4 to this Submission) paragraph 33.

7 Doc refs: Equinor IPs Wake Effects Position Statement (REP6-143); Equinor IP Closing Submissions (REP6-142); Equinor C3 Submission (C3-034).

2.6.1 The Equinor IPs position is that economic loss cannot be reduced by further mitigation measures;

2.6.2 The economic loss suffered by the Equinor IPs arising from wake effects is insignificant; and

2.6.3 The Applicant engaged sufficiently with the Equinor IPs during the formulation of its proposals to discharge its obligations under EN-3. It cannot have done so because it is only after the close of the examination in its October Response that it acknowledged that economic loss arising from wake effects engages consideration under EN-3.

2.7 Whilst it is the Equinor IPs clear position that protective provisions remain the correct mechanism to address the impacts upon its interests arising from wake effects, it recognises that the Secretary of State has, in other cases, seen the use of a requirement as a way of ensuring such control and that the Applicant has put forward a draft requirement in its latest submission. Paragraph 8 of this submission will comment on that draft.

3 Need for Provisions in the DCO

3.1 There is no argument that wake effect is an impact on the economics and potential viability of a wind farm. This is recognised in policy[8] and in recent DCO examinations and decisions[9]. The debate centres on how to appropriately address that impact.

3.2 The Applicant in this case asserts that the wake loss effects arising from the proposed development are *de minimis*, and cannot be said to be significant in EIA terms or material in policy terms, and that no further mitigation can be applied. An important distinction must be recognised between the percentage reduction energy yield and the resultant economic loss. As noted in this case, the former may be perceived as relatively small when expressed as a percentage whilst the latter is very large. EN-3 is concerned with the viability of impacted schemes, which goes directly to economic loss. The Equinor IPs have demonstrated that the scale of economic loss will present a material risk to the future viability of its assets and projects, thus engaging the test in EN-3 paragraph 2.8.347[10].

3.3 The Equinor IPs have demonstrated that the economic loss caused by wake effects from the proposed scheme will adversely impact the viability of its operational assets in the risk of early decommissioning. As regards assets that are consented but not yet operational, risk to future viability is again the risk of early decommissioning arising from economic losses in the long term, and also in the shorter term commercial disadvantage as a result of the uncertainty created by the lack of protection. Future viability is affected as a consequence of the economic loss affecting operating margins and the impact of that loss upon the decommissioning timeframes (it will shorten them to a degree). The uncertainty

8 Draft EN-3 (December 2025) paragraph 2.8.28 and paragraph 2.8.176.

9 Awel y Mor: decision to include requirement; Mona: decision to include requirement (and commercial agreement reached); Morgan: reported that commercial agreement reached; Morecambe: decision to include requirement.

10 NPS EN-3 (2024) paragraph 2.8.347

around the availability of compensation impacts upon the decision of developers on whether to bid into CfD allocation rounds whilst that uncertainty subsists and on what terms.

3.4 The Wood Thilsted Report[11], it is agreed, provided a suitable basis for defining the worst case impact of the proposed development on the Equinor IPs' interests. That report predicted impacts in terms of energy yield ranging from 0.30% to 0.89%. This would give rise to an economic loss of up to £164 million to the net present value of the Equinor IPs' assets and consented projects. Whilst the impact on energy yield was characterised by the Applicant as "*vanishingly small*", it paradoxically noted that the related sums (the economic loss) involved are "*very large*". The Applicant cannot argue it both ways.

3.5 The Applicant has evolved its position over the course of the examination. Its initial position was that wake effects are not relevant to the development consent order process as a matter of policy, and sought to argue (ISH8) that the absence of precedent supported its stance. It has now accepted in its October Response, in the face of numerous decisions of the Secretary of State (see section 9 below), that its original stance was not correct, and that the consideration of wake effects is a matter falling within the scope of policies relating to "other offshore infrastructure and activities" under EN-3. It has also applied the "lack of precedent" argument to the concept of protective provisions.

3.6 The Secretary of State saw fit to decide in respect of the Morecambe DCO for the inclusion of a requirement to protect against wake impacts that ranged between 0.32% and 1.37% for the impacted assets. The decision was made in the context where the AEP impact on six of the eight projects was less than 0.6%. Precedent has therefore clearly been set, via that DCO, that wake impacts causing levels of AEP reduction predicted for the Equinor IPs' assets as a result of the proposed development warrant controls in the corresponding DCO.

3.7 The recent decisions as to the relevance of wake effects is supported by updated policy. Draft EN-3 2025 requires that an applicant must have "taken all reasonable steps to minimise as far as possible the impact of wake effects and shown that they have made reasonable efforts to work collaboratively with those who are likely to be impacted"[12] (emphasis added). The Applicant has not put in place an iterative process required by policy to address such effects[13] and the Equinor IPs do not agree that further mitigation is impossible at the detailed design stage. They do however accept that the issue cannot be avoided entirely. Further assessment, applying the mitigation hierarchy, is required to establish mitigation measures and where mitigation cannot fully address the impact, to set the framework for appropriate compensation.

3.8 It is reasonable to assume that a natural collaborative step is to reach agreement with a third party operator to regulate wake effects. Where no such agreement has been reached, it is reasonable to expect that the development consent order should incorporate measures for interface arrangements. Protective provisions are an established and highly effective means of putting in place a framework for cooperation in order to ensure effective interface of proximate significant infrastructure projects. This is further explored in section 4 below.

4 Role of Protective Provisions

4.1 It is relevant to both of the questions at paragraph 3.1 and 3.2 above that no examining authority has previously deliberated on whether protective provisions are the effective

11 Wood Thilsted Report (REP5-152): assessment of wake effects undertaken by the Applicant.
12 Draft NPS EN-3 (December 2025) paragraph 2.8.316
13 Equinor IP Wake Effects Position Statement (REP6-143) paragraphs 35 to 43.

means to properly address economic loss arising from wake effects. PINS Guidance Advice Note 15 is clear that any applicant should engage early with statutory undertakers to agree protective provisions where a proposed scheme interfaces with an existing statutory undertaking (and where there is no agreed form of protection, the applicant must explain the reasons). Importantly, protective provisions are historically a means of managing the impact of development and the scale of potential impact is not relevant to their role, but only to the drafting and the nature of the protection provided[14]. They are an instrument of regulation as opposed to an arbitrary condition, which is relevant to the question of wake effects because by its nature it requires assessment in order to establish both mitigation and compensation.

4.2 The Applicant considers the imposition of protective provisions as directly equivalent to the imposition of a requirement. This is not the case. PINS Guidance Advice Note 15 is clear on this point, which treats the two concepts as distinct. Whilst a requirement "*correspond(s) with conditions which could have been imposed on the grant of a planning permission*"[15], to be discharged as a prerequisite to development (hence applying the Planning Guidance test for 'necessity, precision and reasonableness'), protective provisions as a construct serve an entirely different purpose to set out a high level framework to govern the interface of the construction and operation of a proposed development with an existing undertaking. The test that is relevant to planning conditions and requirements does not therefore apply to protective provisions, because the latter do not put in place effective conditions to the implementation of the DCO powers, but rather place obligations on the respective parties in how those powers are implemented in order to strike a balance between respective interests and operations.

4.3 The Equinor IPs agree with the Applicant that the difficulty with a requirement is that it does not give clarity as to how wake effect impacts may be resolved; to require an assessment to be carried out in advance of development does not deal with the issue in hand, which is to mitigate impact and provide compensation for loss (applying the mitigation hierarchy). The role that protective provisions play is to establish directly enforceable obligations between the developer and the statutory undertaker, as opposed to bringing in the Secretary of State as a deciding body. This sets up a sensible high level framework for cooperation in order to protect existing infrastructure without preventing development, that is capable of modifying through agreement as a project evolves. It also, in placing the question of economic loss arising from wake effects between the interested parties, recognises the position taken in the government response document to the NPS consultation that "*disputes around compensation for wake effects are regarded to be a commercial matter to be managed between disputing developers…[and that].. the planning system will not adjudicate on matters of compensation for wake loss*"[16] and that "*developers may opt to take such approaches outside of the planning process*"[17]; and where those parties are unable to determine the question, refers the matter to an independent arbitrator.

4.4 The practical effect of paragraph 5 of the protective provisions (as put forward by the Equinor IPs) is to remove the payment of losses from the planning process, as a compensation payment that becomes payable following a fair and objective assessment of the quantum. This is compliant with paragraph 2.8.233 of draft EN-3. This is a justified,

14 PINS Advice Note 15 – protective provisions should be proportionate to the specific project
15 Planning Act 2008, s.120(2)
16 Draft EN-3 (November 2025)
17 Draft EN-3 (December 2025) paragraph 2.8.233

proportionate and precedented rationale upon which the Secretary of State could meaningfully process in the best interests of both parties and public interest.

4.5 The Equinor IPs are statutory undertakers (holders of electricity generation licence under section (6)(1)(a) of the Electricity Act 1989). Protective provisions are an established means of protecting existing assets and other licensable activities in the context of infrastructure planning and development. They are an established mechanism to safeguard existing assets, licensable activities and operations of statutory undertakers and are employed to do so across DCOs, Transport and Works Act Orders and hybrid Bills authorising major infrastructure development.

4.6 PINS Advice Note 15 requires all applicants to include protective provisions for the protection of the existing assets and licensable activities of statutory undertakers with whom the proposed scheme will interface. Applying Advice Note 15 to the policy position as set out in EN-3, protective provisions are the logical means to secure a fair approach to safeguard the existing offshore infrastructure.

5 Draft Protective Provisions

5.1 The Applicant has commented on the draft protective provisions submitted by the Equinor IPs[18], however has not – even on a without prejudice basis – suggested alternative drafting. Rather, the Applicant dismisses as a point of principle the concept of protective provisions as a means of addressing wake loss effects (and the grounds upon which Equinor IPs disagree with this are set out in sections 3 and 4 above and supported in Appendix 4).

5.2 The Equinor IPs response to the Applicant's comments on the draft protective provisions follows:

5.2.1 The threshold set by a benchmark requiring "all reasonable measures" to "minimise" an impact is capable agreeing through cooperation, and in the absence of agreement objective resolution by a third party. It is a direct manifestation of the logic prescribed by the mitigation hierarchy, and reflects the policy guidance to as to the planning balance which states that "*where an applicant has demonstrated that they have made an assessment of inter-array wake, taken all reasonable steps to minimise as far as reasonably possible the impact of wake effects and shown that they have made reasonable efforts to work collaboratively with those who may potentially be impacted, then the existence of a residual wake effect impact is unlikely to carry more than limited weight against a project in the planning balance*[19]". (emphasis added)

5.2.2 A DCO may make provision for the payment of compensation[20], and this has considerable precedent in protective provisions across development consent orders – in terms of compensation, indemnities, payment for loss as well as payment of commuted sums[21].

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18 The Applicant's Submissions on Wake Loss Matters (DL6 Doc Ref 24.12)
19 Draft EN-3 (December 2025) paragraph 2.8.316
20 Planning Act 2008, s.120, Schedule 5 paragraph 36
21 See extract from Schedule 14 Part 5 of The Associated British Ports (Immingham Green Energy Terminal) Order 2025 at Appendix 3 of Equinor IPs Wake Effects Position Statement (doc ref REP6-143)

5.3 In its closing statement, the Applicant suggests that the imposition of protective provisions "must logically be subject to the same tests as the imposition of requirements", and that the employment of protective provisions as a means to address wake effects fails that test as well as the broader principles of legal certainty particularly in regards to the payment of compensation where, it is argued, the concept has "no basis in law, policy, precedent or evidence". This position is strongly refuted for the reasons set out in section 4 and supported in Appendix 4.

5.4 Policy guidance as to consideration that must be given to impact on third party development, is clear that the Secretary of State must take into account the impacts of a proposed development on the future viability of existing offshore infrastructure and the consultation that an applicant has undergone at an early stage and mitigation measures to negate or reduce effects on other offshore infrastructure or operations[22]. Not only does this support the imposition of mitigation measures through protective provisions. It also supports the Equinor IPs position that it is not the degree of wake loss effects that should be relevant to consideration, but the need to mitigate those effects.

6 The Applicant's Response to the Second Request for Information – Wake Effects

6.1 As well as lacking in foundation, the combative tone of the October 2025 submission is in direct contravention of government policy (EN-3) as well as National Infrastructure Planning Guidance[23]. NPS EN-3 has the clear objective of delivering the wider policy objective set out in EN-1 to boost growth and productivity across the whole of the UK and deliver net zero by 2050. The investment that is fundamental to bringing forward critical infrastructure schemes to delivery net zero will be deterred should the Secretary of State not put in place a framework to protect existing undertakings from adverse impacts of new projects. If there is a precedent of new projects causing uncompensated wake effects on existing operational wind farms and challenging the viability of the latter, investor confidence in the market will be undermined having the effect of slowing down development, directly contrary to policy. It is not helpful nor in line with policy to pitch against a proximate NSIP as a "commercial rival"[24]. Rather, where operators of proximate schemes might have competing interests, it is sensible, reasonable and in the interests of progress and development that a framework for cooperation and, where appropriate, compensation is established. A precedent of such an approach is seen in the interface arrangements established through the provisions for the protection of National Grid Electricity Transmission (NGET), which often has conflicted interests with the delivery of renewable energy schemes where those schemes connect into the national grid. In order to accommodate the interface, the NGET standard form protective provisions include drafting which protects the delivery of future NGET schemes[25]. A similar approach has been adopted on proximate solar farms[26]. EN-1 is clear on the decision making process through the planning balance, which is to take into account all adverse impacts against the benefits of a scheme, as well as measures to reduce those impacts through the planning balance. That is the approach that has been adopted by the NGET

22 EN-3 (2024) paragraph 2.8.347 and 2.8.348
23 Advice Note 15: Content of a DCO
24 The Applicant's Response to Rfl2 – Wake Effects doc Ref 28.5 paragraph 28.
25 The Awel y Mor Offshore Wind Farm Order 2023 Schedule 9, Part 3 paragraph 22
26 The Heckington Fen Solar Farm Order 2025, Schedule 13 Part 11 (For the Protection of Beacon Fen Energy Park Limited)

standard protective provisions and solar farm projects, and should clearly be adopted in this case.

6.2 Draft EN-3 requires applicants to work collaboratively with other developers and sea users, in recognition that a potential wind farm will have the potential to affect the activities of a proximate operation for which a licence has been issued by government[27]. It also requires applicants to consider the impact of their proposal on other activities and make reasonable endeavours to address these[28]. The Equinor IPs recognise that there has been some degree of engagement, particularly in the Wood Thilsted Wake Impact Assessment Report. However, it is significant that the Applicant consistently refuses to recognise the findings of that Report (that there will be an adverse impact on existing infrastructure) in proactive steps to put in place mitigation and compensation measures. In not doing so, the Applicant has failed to show a collaborative approach.

6.3 Table 1 at Appendix 1 rebuts the Applicant's assertion that the Equinor IPs have not addressed the Applicant's argument against the need and justification for Protective Provisions on the face of the DCO.

6.4 Table 2 at Appendix 2 addresses the point made in para 27 of the Applicant's submission which erroneously describes how the protective provisions are intended to operate in practice. In that paragraph the Applicant asserts that the operation of the suggested protective provisions would be detrimental to its operations, and would be in the sole control of the Equinor IPs (and Orsted IPs). This is not the case. The provisions would operate to bring in an objective third party to assess the impact of wake loss and assess compensation accordingly. This framework is established in precedent as set out in Table 2 (column 3). The use of an independent third party, and the recourse to arbitration in the absence of agreement is objective and on that basis, reasonable. It does not put the control in the hands of the protected party. This would not cause delay and cost – rather it would put the parties on an equal footing.

7 Decisions relating to Wake Loss

7.1 As has been recognised by the Applicant, policy now requires developers of offshore wind farms to assess the wake effects, following the Awel y Mor decision which was clear that wake loss effects are an important impact to consider as the development of offshore infrastructure rises. In that case, as well as the more recent decision on Mona Offshore Wind Farm, the imposition of a requirement was considered the appropriate means to regulate the effects. As noted, the recognition of wake loss as a planning consideration (and the need for mitigation) is explicit in EN-3.

7.2 It is also explicit in EN-3 that wake loss has commercial implications, and it has been reported that developers have reached commercial agreement on that basis, in the case of the Mona Offshore Wind Farm and the Morgan Offshore Wind Farm.

27 NPS-EN3 (December 2025) paragraph 2.8.173
28 NPS-EN3 (December 2025) paragraph 2.8.176

7.3 In its Report of the Mona Wind Farm examination, the ExA expressed concerns with the approach adopted by the Awel y Mor ExA, to control impact of wake loss through Requirement.

7.4 The Morgan ExA recognises that the "*matter of wake loss has gained traction …* (paragraph 3.12.107)" and also noted that wake loss is not appropriately dealt with through a Requirement. Ultimately the Secretary of State did not need to consider the issue as an agreement enabled the position to be resolved. Protective provisions as an alternative approach was not considered.

7.5 The Morecambe ExA noted: "*the potential for wake effects to occur is not in contention and, as the applicant has accepted that effects could occur, we are of the view that the applicant should have therefore carried out its own wake effects assessment as part of its application. As no such assessment was undertaken, in that regard we consider the applicant to have failed to comply fully with the requirements of paragraph 2.8.197 of NPS EN-3".* The Report stressed the policy requirement to work collaboratively with other developers and sea users, and to use best efforts and opportunities to resolve and minimise the negative effects of wake loss through engagement. Ultimately, an agreed form of requirement was included in the DCO.

7.6 Whilst the Secretary of State chose to impose a requirement in the Awel y Mor, Mona and Morecambe decisions despite the concerns expressed by the ExA's he did not have the option of protective provisions before him. In the Equinor IPs submission, the protective provisions provide a clear process to address this significant issue and do not give rise to the same concerns as a requirement. They are pre-emptive and set out a comprehensive framework for necessary steps to mitigate negative impacts and a means to assess compensation.

8 Without Prejudice Comments on draft Requirement

8.1 Whilst the Equinor IPs' strong preference remains for the protective provisions to be included, they nevertheless, acknowledge that the Applicant has proposed a form of requirement on a without prejudice basis in its October Response. Accordingly, in this section the Equinor IPs are equally responding to that proposal on a without prejudice basis, should the Secretary of State prefer a requirement to address the issue of wake effects over the inclusion of protective provisions.

8.2 However, before doing so, it is necessary to comment on the Applicant's submissions at paragraphs 66-82 of its October Response as to whether it would be appropriate for the Secretary of State to impose a requirement in this case, not least because the Applicant has mis-characterised the position of the Equinor IPs on the issue of mitigation.

8.3 At paragraphs 78 and 79 of its Response, the Applicant states that, similar to the Mona application, there is no evidence before the Secretary of State in relation to the Outer Dowsing application that indicates that mitigation would address the issue, and that the position of the Equinor IPs is that they do not consider mitigation measures to be capable of addressing the issue. In doing so, the Applicant is clearly attempting to persuade the Secretary of State that it has done all it can to mitigate wake effects, that this is accepted by the Equinor IPs and that therefore no further mitigation can be required such that a requirement would be become unnecessary and unreasonable, given its characterisation of the impact as "*vanishingly small*". This is a false proposition for the following reasons:

8.3.1 The impact is not "*vanishingly small*" as referred in section 3 of this Submission. Rather the Applicant's own evidence demonstrates that the economic losses suffered across the impacted projects would potentially be in the order of £164million to the net present value of the Equinor IPs' assets and consented projects.

8.3.2 The Equinor IPs position on the question of mitigation is set out in paragraph 39 of its Wake Effects Position Statement[29]. It maintains that further mitigation measures may be capable of accommodation at the detailed design stage, for example through layout and turbine selection which would reduce the impact. However, the Equinor IPs acknowledge that the effects are unlikely to be avoided entirely through mitigation.

8.3.3 It is based upon a presumption that the Applicant has indeed done all it could to mitigate the issue. This is nonsensical. The Applicant argued throughout the Examination that the issue of wake effects was not a matter falling to be considered by the Secretary of State under the terms of EN-3. In echoes of its position on protective provisions, it sought to argue (at ISH8) the absence of precedent in support of its stance. Having now accepted that wake effects are a relevant policy consideration, the Applicant cannot legitimately seek to persuade the Secretary of State that, on a matter which it did not consider relevant, the formulation of its proposals had sufficient regard to mitigating the issue such that the Applicant has demonstrated that further mitigation is not possible.

8.3.4 It would be entirely without evidential basis and therefore illogical for the Secretary of State to conclude, simply because the Applicant has submitted an assessment of the effects with which the Equinor IPs agree (the Wood Thilsted Report), that firstly, it has complied with requirements of EN-3 with respect to mitigating the impacts of wake effects in formulating its proposals, and secondly that no further mitigation might be possible. Indeed, the Applicant acknowledged, during a discussion on the protective provisions in ISH8, that a further assessment would be required to understand the impact of the final design.

8.3.5 Accordingly, the Applicant cannot sufficiently distinguish its position from that of the Mona applicant. It has submitted no evidence to argue that further mitigation to reduce (albeit not eliminate) wake loss effects is impossible and therefore the Secretary of State has no basis to consider that the mitigation hierarchy has been complied with.

8.4 The Applicant also seeks to argue that the approach followed in the Mona requirement, and subsequently in the Morecambe requirement is unlawful because it presents a private agreement as an alternative to the submission of a wake effects plan. It does this via limb 1(b) in both requirements which states as follows (using the Mona example):

> *"the undertaker has provided evidence to the Secretary of State that alternative mitigation for wake effects has been agreed with the existing Orsted offshore wind farms"*

8.5 The characterisation is incorrect because:

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29 Document ref: REP6-143

8.5.1 The impact upon "other offshore infrastructure and activities" which EN-3 is aiming to mitigate is one of "*disruption or economic loss or any adverse effect on safety to other offshore industries*"[30]. Economic loss caused to the operator of another offshore wind farm, and the mitigation thereof, is therefore a matter of relevance to the planning process as a result of the policy[31]. Where such economic loss arises (as in this case) due the impact of an incoming project on the project of another party there is the potential for an agreement between those parties to remove that loss. It is precisely this eventuality that draft EN-3 contemplates when stating that developers may wish to enter into compensation arrangements outside of the planning process[32]. It is implicit in the wording of paragraph 2.8.233 of draft EN-3 that whilst such arrangements may not be necessary to mitigate, if entered into, then they could have the effect of mitigating the impact. Where such arrangements are entered into, it is entirely reasonable for them to be regarding as mitigating the impact of economic loss, and indeed is an outcome that the developer of a project would wish.

8.5.2 In any event, limb (b) is an alternative to the submission of a wake effects plan under limb (a). The developer would retain the discretion over the way in which it wished a requirement to be discharged.

8.6 Consequently, the wording now proposed by the Applicant is inadequate at striking the correct balance between mitigating the economic loss caused to the Equinor IP's interests and providing certainty to the Applicant as to how it can progress its project.

8.7 In particular:

8.7.1 it does not allow an agreement reached between parties to be taken into account in the discharge of the requirement. This is an import consideration contemplated by policy as noted above and is a matter which both developers and affected parties would reasonably wish to be considered. In this respect, the Equinor IPs note that in respect of the Mona project it has been reported that the applicant has since reached a private agreement with the operator of the affected wind farms in order to discharge the equivalent requirement (requirement 29) pursuant to the Mona DCO. If limb (b) had not been included then the developer of the Mona project would still have had to submit a wake effects plan and go through the ensuing process. This would have been a pointless exercise when the impact has already been mitigated in the view of the affected parties and would have the effect of delaying the progression of the development;

8.7.2 it provides no clarity on the matters to be addressed by the wake effects plan; and

8.7.3 it provides no mechanism for affected parties to be consulted upon any mitigation measures proposed as contemplated by EN-3 (January 2024) and draft EN-3.

8.8 If a requirement is to be adopted instead of protective provisions, then the Equinor IPs preference would be for the structure adopted by the Secretary of State at Requirement 13

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30 Draft EN-3 (December 2025) para 2.8.312

31 Draft EN-3 (December 2025) paragraph 2.8.314: "*where a proposed development is likely to affect the future viability or safety of an existing or approved / licensed offshore infrastructure or activity, the Secretary of State should give these adverse effects substantial weight in its decision making*"

32 EN-3 (December 2025) para 2.8.233

of The Morecambe Offshore Windfarm Generation Assets Order 2025 to be used, with the following amendments:

8.8.1 Timing of discharge – due to the need for the measures to be taken into account in the design of the authorised development via the design plan, the requirement should be discharged prior to the commencement of any works to construct the wind turbine generators.

8.8.2 Requirement 1(c) – has been inserted to allow a pragmatic approach whereby an agreement has been reached with some but not all of the owners of affected projects.

8.8.3 Compensation - amendment has been included to make it expressly clear that mitigation may include compensation payments. The rationale for this is set out above.

8.8.4 "*Reasonable Steps*" v "*All Steps*" – in the Morecambe requirement, the wake effects plan is a plan that captures steps taken and identifies those steps to be secured and taken in the future. If a plan is to be submitted then the undertaker should be required to identify all steps that it has considered, and a justification for those which it has discounted. It is only if it does so, can the Secretary of State determine whether there are no other reasonable measures that it should have considered. Given that the wake effects plan can be submitted after the event, this will protect the undertaker by ensuring that the process is robust and precise and that the undertaker does not "fail" in discharging the requirement on the basis of a dispute or a failure as to what is reasonable to minimise wake effects.

8.8.5 Impacts on both projects – amendments have been made to paragraph 2(a) to provide further clarity that the assessment on the existing and proposed projects should consider the impact on annual energy production and introduced a new paragraph 2(c). The combined effect of these provides a clear reporting mechanism which captures both the saving afforded to the affected projects through all steps considered, and the associated loss in respect of the Projects through all steps considered. By expressly requiring this to be reported on, it ensures that the Secretary of State is fully informed of the overall picture in respect of output for all steps considered by the Applicant.

8.8.6 The Equinor IPs are aware that the Secretary of State recently consulted upon a form of requirement in relation to the Dogger Bank South application which included the italicised paragraphs and 2(f)-(g) in Appendix 3, although they did not form part of the Morecambe requirement. The Equinor IP's considers those paragraphs to be a helpful addition to the Morecambe requirement and should the Secretary of State be minded to include a requirement in this case, would have no objection to the inclusion of those paragraphs.

9 Conclusion

9.1 The Equinor IPs remain firmly of the view that protection from the economic loss arising from wake effects is warranted on the face of the DCO. This view is consistent with previous decisions as identified in section 7 of this submission, and the proper interpretation of policy

as identified in sections 3, 4, 6 (and appendices 1 and 2) of this submission. The case as presented by the Applicant is rebutted as inaccurate and inconsistent. Wake effects, and economic loss arising from them, are evidenced by the Wood Thilsted Report, and the need to mitigate those impacts and apply the mitigation hierarchy is upheld by policy. Protective provisions are an established means of putting in place a framework for interface of existing statutory undertakings in the context of new development, and are upheld as effective by PINS guidance.

9.2 As set out in this, and previous submissions, there is established precedent for protective provisions to provide for compensation and for revenue loss. Indeed, the standard provisions for Network Rail Infrastructure Limited incorporating such precedent are included in the draft DCO for the proposed development. In providing for a framework for the interface of new development and existing statutory undertakings, and an appropriate adjudication process in the event of dispute, protective provisions provide a constructive means to address interface issues without asking the planning process to adjudicate on compensation.

9.3 The Equinor IPs have in this submission provided without prejudice comments on the requirement put forward by the Applicant in its October Response. Should the Secretary of State express a preference for wake effects to be dealt with through the imposition of a requirement as opposed to protective provisions, the Equinor IPs, on a without prejudice basis submit that the form attached at Appendix 3 provides a more robust process for balancing the interests of the Applicant and the Equinor IPs, whilst ensuring that the Applicant takes appropriate steps to comply with the mitigation hierarchy as envisaged by EN-3, and for the reasons articulated in Leading Counsel's Opinion can include compensation.

Appendix 1 – Wake Loss: evidence and justification for protection

Appendix 1 – Table 1

Wake Loss: evidence and justification for protection

Issue	Applicant's position as summarised in the October Response	Equinor's position
Legal basis	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 does not provide a basis to warrant consideration of the wake loss effects as a significant environmental impact, which have been assessed to be "vanishingly small" in the Wood Thilsted Report (less than 1%).	Addressed in: • Equinor IP DL5 Submission (REP5-157) Section 3. • Equinor IPs Wake Effects Position Statement (REP6-143) Section 4. Likelihood of economic loss arising from wake effect impacts is recognised by the Applicant and the conclusion drawn around the scale of impact in terms of reduction in energy yield does not properly take into account the associated economic loss which the Wood Thilsted Report notes could be £164million, and a sum which the Applicant acknowledged was "very large". The wake effects causing economic loss challenge future viability of the wind farm in terms of productivity and early decommissioning, and that the associated loss (decommissioning) represents a significant impact.

Policy basis	EN-3 does not include a requirement for an applicant for an offshore wind farm to conduct a detailed wake loss assessment. (This position was reversed in the Applicant's October Response, following the Secretary of State's decisions and reasoning in the Mona, Morecambe and Morgan offshore wind farm examination.)	Equinor IPs have consistently stated the firm policy foundations for wake loss assessment, summarised in DL6 Submission and Equinor IPs Wake Effect Position Statement section 3 [Doc ref REP6-143]. This position is now accepted by the Applicant. The Equinor IPs challenge the position as stated in paragraphs 13 and 16 of the October Response that the Applicant could have complied with a policy position that previous to the Mona decision, it resisted as applicable. Awel y Mor is legal precedent for wake loss considerations to be taken into account in off shore wind farm planning and consenting. The subsequent Mona, Morgan and Morecambe discussions uphold this.
Financial justification	That evidence submitted is limited; financial loss is not an environmental impact.	The Equinor IPs addressed this in Appendix 1 to the Wake Effects Position Statement [Doc ref REP6-143].
Viability of impacted windfarms	Unless it has been demonstrated that viability is likely to be affected, the financial implications of predicted wake impacts are purely a private financial matter with no planning implications.	The Equinor IPs addressed this in their Wake Effects Position Statement [Doc ref REP6-143] - section 5 which noted that economic impacts may bring forward decommissioning. See summary of Equinor IPs position in Section 3 of this Submission.

Appendix 2 – Protective Provisions: legal, policy and precedent

Appendix 2 – Table 2

Protective Provisions: legal, policy and precedent

Provision	NPS EN-3 (draft December 2025) NPS EN-3 (January 2024) NPS EN-1 (January 2024)	Precedent protective provision
3. *Prior to the commencement of the authorised scheme, the undertaker must in the design of the authorised scheme take all reasonable measures to minimise Wake Loss effects provided that this shall not require the undertaker to materially reduce the generating capacity of the authorised scheme.*	Draft NPS EN-3 Paragraph 2.8.176: "at the design stage there are clear merits for applicants to make an assessment of inter-array wake effects between their proposed developments, and nearby offshore wind generating stations that are planned, consented or operational." Draft NPS EN-3 Paragraph 2.8.232: Applicants should demonstrate that they have taken all reasonable steps to minimise so far as possible the impact of wake effects. NPS EN-3 Paragraph 2.8.344: The applicant is expected to minimise negative impacts on other projects which may include negative economic impacts from wake loss. NPS EN-3 Paragraph 2.8.345: The Secretary of State should be satisfied that the site selection and site design has been made with a view to avoiding or minimising economic loss. EN-1 Paragraph 2.1.4: "in demonstrating compliance with the NPS, the mitigation hierarchy should be applied"	Network Rail standard protective provisions on Electro-magnetic Interference ("EMI") are accepted precedent provisions placing an authorised undertaker under a duty to design and construct the authorised development so to take all reasonable endeavours to minimise EMI, and parties to consult to facilitate development such that EMI is mitigated to eradicate that impact. The authorised undertaker is prevented from implementing development until such mitigation is in place to ensure no EMI. The Awel y Mor Offshore Wind Farm Order 2023, Schedule 9 Part 6, paragraph 68 The Cottam Solar Project Order 2024, Schedule 15, Part 10 paragraph 125 Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 Schedule 12, Part 2 paragraph 11 Heckington Fen Solar Park Order 2025 Schedule 13, Part 8, paragraph 92 The Helios Renewable Energy Project Order 2025 Paragraph 99 The National Grid (Hinkley Point C Connection Project) Order 2016, Schedule 15, Part 4 paragraph 39

			The Hornsea Four Offshore Wind Farm Order 2023, Schedule 9, Part 4 paragraph 12 The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 paragraph 60 Mona Offshore Wind Farm Order 2025, Schedule 10 Part 8 paragraph 109
4.	*In order to facilitate the undertaker's compliance with paragraph 3: a) the undertaker must consult with the Equinor Electricity Undertakers as early as reasonably practicable …and b) the Equinor Electricity Undertakers must make available to the undertaker all information ..reasonably requested.*	Paragraph 2.8.316: applicants to demonstrate that they have worked collaboratively with those who are potentially impacted.	The requirement for cooperation underpins the concept of protective provisions, to put in place a framework for the interface of proximate schemes. **Operation in practice:** Establish a framework of cooperation between the parties to put in place mitigation measures in the design process.
5.	*Commission of third party Energy Yield Study and payment of commuted sum calculated by reference to the findings.* *Referral to arbitration in absence of agreement of third party.*	Draft NPS EN-3 Paragraph 2.8.233 – removes the commercial arrangements outside of the consenting/ planning process to be agreed following detailed assessment. NPS EN-3 Paragraph 2.8.347: Any residual effects on future viability of other projects should be given substantial weight.	Network Rail standard protective provisions include an accepted precedent for payment of loss of revenue (suffered by train operating companies). This precedent was cited in section 6 of the Equinor IP Wake Effects Position Statement. It is included in the following made DCOs: The Awel y Mor Offshore Wind Farm Order 2023, Schedule 9 Part 6, paragraph 72 The Cottam Solar Project Order 2024, Schedule 15, Part 10 paragraph 129 Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 Schedule 12, Part 2, paragraph 15 Heckington Fen Solar Park Order 2025 Schedule 13, Part 8, para 96

		The Helios Renewable Energy Project Order 2025 Paragraph 103 The National Grid (Hinkley Point C Connection Project) Order 2016, Schedule 15, Part 4 paragraph 43 The Hornsea Four Offshore Wind Farm Order 2023, Schedule 9, Part 4 paragraph 16 The Mona Offshore Wind Farm Order 2025, Schedule 10, Part 8 paragraph 113 The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 paragraph 64 NGET standard protective provisions include provision for payment of costs that are reasonably anticipated in consequence of the authorised works. **Operation in practice:** Ensure fair payment of compensation for loss incurred. Compensation for loss is an accepted concept in the planning system and mitigation hierarchy.
7. *Provision to enter into co-operation agreement*	Addresses paragraph 2.8.316 of draft NPS EN-3 (December 2025)	
7. provision to enter into proximity agreement	Addresses paragraph 2.8.316 of draft NPS EN-3 (December 2025)	

Appendix 3 – The Equinor IPs' suggested form of requirement submitted on a without prejudice basis

Appendix 3

The Equinor IP's suggested form of requirement

Submitted on a "without prejudice" basis

Wake Effects

(1) Work no 1(a) must not be commenced until either—

(a) a wake effects plan has been submitted to and approved by the Secretary of State following consultation with each of the owners of the existing and proposed offshore wind farms; or

(b) the undertaker has provided evidence to the Secretary of State that alternative mitigation for wake effects (which may include compensation for economic loss) has been agreed with each of the owners of the existing and proposed offshore wind farms; or

(c) A combination of (1)(a) and (1)(b) is provided to and agreed by the Secretary of State to ensure that the wake effects of the authorised project on each of the existing and proposed offshore wind farm(s) are mitigated

(2) A wake effects plan provided in accordance with paragraphs (1)(a) or 1(c) must include:

(a) an assessment of the wake effects from the approved development on the annual energy production of the existing and proposed offshore wind farm(s);

(b) details of all steps that have been taken by the undertaker in the final design of the authorised development or measures which will be applied during the operation of the authorised development (or both) to minimise wake effects on the existing and proposed offshore wind farms (which may include compensation for economic loss) without materially reducing the capacity of the authorised development;

(c) details of the impact on the reduction of the capacity of the authorised development as a consequence of the steps taken or proposed to be taken pursuant to paragraph 2(b);

(d) details of consultation with the owners of the existing and proposed offshore wind farms and the extent of any agreement or disagreement with them regarding —

(i) whether any design changes or operational measures could further reduce the wake effect impacts; and

(ii) the conclusions of the wake effects assessment provided under paragraph 2(a).

(e) the timescales for implementation of any wake effect mitigation measures;

(f) any time limits for wake effect mitigation measures; and

(g) details of any necessary monitoring of the wake effect mitigation measures

(3) Where paragraph (1)(a) or 1(c) applies, the wake effects plan must be implemented as approved and the design plan submitted to the licensing authority under condition 13(1)(a) of Schedule 10 to this Order must be in accordance with any approved wake effects plans.

(4) For the purposes of this requirement— "existing and proposed offshore wind farms" includes the following— (a) Sheringham Shoal Offshore Wind Farm; (b) Dudgeon Offshore Wind Farm; (c) Sheringham Shoal Offshore Wind Farm; (d) Dudgeon Extension Offshore Wind Farm; (e) Race Bank Offshore Wind Farm; (f) Hornsea 1 Offshore Wind Farm; (g) Hornsea 2 Offshore Wind Farm

Appendix 4 – Opinion of Richard Turney KC Landmark Chambers

OUTER DOWSING OFFSHORE WINDFARM

WAKE LOSS

OPINION

1. I am asked to advise Scira Offshore Energy Limited, Dudgeon Offshore Wind Limited, Scira Extension Limited, and Dudgeon Extension Limited (together the "Equinor IPs"), and Hornsea 1 Limited, the collective of Breesea Limited, Soundmark Wind Limited, Sonningmay Limited and Optimus Wind Limited (together, the "Hornsea 2 Companies") and Race Bank Wind Farm Limited (together the "Ørsted IPs") in respect of an application for development consent for Outer Dowsing Offshore Wind Farm ("ODOW"). The ODOW application is made by GT R4 Limited (trading as Outer Dowsing Offshore Wind) ("the Applicant").

2. I am asked to advise in respect of issues relating to wake effects from the proposed ODOW on windfarms owned and operated by the Equinor and Ørsted IPs. The Equinor and Ørsted IPs are together statutory undertakers for seven offshore windfarms. Five of those windfarms are operational (Sheringham Shoal, Dudgeon, Race Bank, Hornsea One and Hornsea Two) and two of them are expected to be in operation by 2030 (Sheringham Shoal Extension and Dudgeon Extension).

Factual background

3. The Applicant applied for development consent for ODOW and the examination closed in April 2025. During the course of the examination the Applicant undertook a wake loss assessment in relation to the impact of ODOW on the seven offshore windfarms as well as other projects ("the Wood Thilsted Report"). Although there were some points of contention arising from the Wood Thilsted Report, by the close of the examination the Equinor and Ørsted IPs were content to treat it as the basis for defining impacts on their offshore windfarms.

4. The predicted impacts were in each case a reduction in energy yield of less than 1%. However, the economic losses involved would be very substantial. The Equinor IPs put forward an economic loss of between £42m and £164m, and the Ørsted IPs suggested they would suffer a financial impact of between £55m and

£199m. Both sets of IPs explained that these impacts would have a potential or likely effect on future viability of the seven windfarms. The Equinor IP's Position Statement in April 2025 said:

> "75. The Applicant submitted at Issue Specific Hearing 8 (ISH8) that the Equinor IPs have not provided sufficient evidence to demonstrate that the bar in policy test NPS EN-3 para 2.8.347 of 'likely to affect the future viability' has been met.
>
> 76. The Equinor IPs submitted a Financial Impact Assessment (FIA) (our document reference C282-EQ-Z-GA-00035) into the Examination on 27 March 2025 which was accepted at the discretion of the Examining Authority. The FIA aimed to provide a quantification for the range of the likely economic loss to be suffered by the Equinor IPs assets and projects. As set out in Section 4 above, the Equinor IPs consider the impacts to be significant. (An updated FIA has been included at Appendix 1).
>
> 77. At ISH8 the Equinor IPs explained that such loss presents a material risk to the future viability of the projects (see Written Summary of Equinor IPs' Oral Submissions at Issue Specific Hearing (ISH) 8, submitted at Deadline 6). Sections 5.1 and 5.2 below set out further evidence that demonstrates the effect on future viability for SHS, DOW, SEP and DEP.
>
> 78. This evidence, coupled with the policy justification set out in Section 3.2, together demonstrate that the NPS EN-3 para 2.8.347 test has been met i.e. the proposed development is likely to affect the future viability."

5. Similarly, the Ørsted IPs' Closing Statement explained:

> "*Likely to Affect Future Viability*
>
> Turning to the second limb, the Applicant's position is that the "future viability" of the Ørsted IPs' assets is not "likely" to be affected by the Outer Dowsing Project. Indeed, during ISH8, the Applicant asserted that paragraph 2.8.347 of NPS EN-3 should be considered as a binary test of whether the wake effect of the Outer Dowsing Project would be likely to render the Ørsted IPs' assets to be rendered completely and immediately unviable or not. The Ørsted IPs disagree with this position.
>
> Paragraph 2.8.347 of NPS EN-3 should not be interpreted as requiring the Ørsted IPs' assets to be rendered completely and immediately unviable as a result of the Outer Dowsing Project (as that would place the evidence bar at an unreasonably high level), nor should it be interpreted as requiring that the future viability of these assets will be affected. The test is whether such future viability is likely to be affected in a significant manner (as addressed above), and if this is demonstrated

then the Ørsted IPs assets must be worthy of protection (and such effects must be afforded substantial weight in the decision-making process in accordance with paragraph 2.8.347 of NPS EN-3).

The Ørsted IPs submit that the future viability of their assets is likely to be affected by the Outer Dowsing Project. The AEP impact is likely to impact the decisions around timing of decommissioning for these assets (i.e. bringing decommissioning forward). Whilst this impact may not necessarily result in the termination of the Ørsted IPs' projects immediately upon suffering the wake effects, permitting this impact to remain unmitigated and/or uncompensated would set a precedent in favour of premature decommissioning of such assets across UK waters (given that any new projects would also be subject to the same likelihood of premature decommissioning as future offshore wind farm projects are subsequently consented and installed). Given that government policy supports an increase in installed offshore wind capacity from the current level of 15 gigawatts to approximately 100 gigawatts by 2050, the magnitude of inter-wind farm wake effects will inevitably increase as this planned build-out is realised – this makes any such precedent-setting particularly dangerous, as it effectively incentivises new projects to significantly impact the most valuable (from a sustainability perspective aspect of existing projects (i.e. the operational tail-end)."

6. Both the Equinor and Ørsted IPs contended for protective provisions which would secure the payment of compensation for these losses. In respect of the scope for protective provisions, the Equinor IPs' position statement explained:

"32. EN-3 is almost unique amongst national policy statements in making economic loss suffered by third parties an important and relevant matter in the determination of applications. It only does this in relation to offshore wind, and only in so far as impacts relate to shipping and navigation, and to other offshore infrastructure and activities. Parliament, in designating the NPS in these terms, considered offshore wind and its potential to impact upon other offshore infrastructure and activities as somewhat of a special case.

33. As a result, it does not assist the Applicant to refer to the absence of precedent in other DCO examinations to third parties being compensated for economic loss, but in any event those submissions are also incorrect. The Equinor IPs refer to the following examples:

i. whilst the issue of economic loss arising from the reduction in wind resource caused by one project on another is relatively novel, the principle of an offshore industry being compensated for economic loss arising as a result of an offshore wind farm proposal through the provisions of a DCO is not. The Applicant, the Examining Authority and the Secretary of State will be aware that it is

commonplace for the fishing industry to be compensated for economic loss arising from the construction of offshore wind farms through the application of the FLOWW guidelines. Indeed, the Applicant has provided such a mechanism through its Outline Fisheries Liaison and Co-Existence Plan [PD-061] (section 4.4), the provisions of which are secured through the deemed marine licences.

ii. By way of a further example, the Equinor IPs also refer to the recently made The Associated British Ports (Immingham Green Energy Terminal) Order 2025. Schedule 14 Part 5 contains protective provisions in favour of Network Rail. These include, at paragraph 72, an obligation to reimburse train operating companies for any loss of revenue suffered by them as a consequence of the works."

7. In its submissions in response to the second and third consultations by the Secretary of State, the Ørsted IPs made broader points about the case for protective provisions including compensation:

> "The Ørsted IPs also wish to note the significant challenges and inefficiencies that will be introduced if an appropriate solution to wake loss impacts is not found. It cannot be the case that new developers are permitted to impose uncompensated wake losses on existing assets (that are already operational and are currently benefitting the UK) without adequate mitigation and/or compensation, as this risks undermining investor confidence and system-wide efficiency within the UK's offshore wind portfolio, alongside being contrary to the government's renewable energy policies and targets in relation to offshore wind. This would set a precedent of failing to deter new projects from significantly impacting the most valuable (from a sustainability perspective) aspect of existing projects (i.e. the operational tail-end). The protective provisions proposed by the Ørsted IPs prevent the setting of this dangerous precedent.
>
> Wake effects are an inevitable feature impacting both existing and planned offshore wind farms across the majority of the UK's Exclusive Economic Zone ("EEZ") (as well as across other EEZs where available sea-space is limited). In order to appropriately minimise UK wake loss impacts at the system-wide level, the wake loss impacts that will be created through new leasing rounds should be properly weighted (amongst the many other siting constraints), both by The Crown Estate (when prospective lease areas are selected) and by prospective lessees (as they value and seek to secure the varying lease sites on offer). Notwithstanding these efforts to minimise system-wide wake impacts through the efficient siting of new offshore wind farms, residual wake impacts will inevitably need to be managed. This can be achieved in two ways in a DCO – protective provisions or a requirement. As set out above and in previous submissions, the Ørsted IPs consider that protective provisions are the more appropriate solution. When developers compete for newly offered lease areas, they quantify the wake effects that will be imposed upon each lease area by

surrounding offshore wind farms; this is one of several factors that determines the overall attractiveness, or value, of the lease sites on offer. However, in order to support the efficient development of the UK's EEZ, a precedent is required (through the DCO process) that will ensure that developers factor-in the full wake effect associated with a given lease area, i.e. both: (1) the wake effect that will be imposed upon that new project; and (2) the wake effect that will be imposed by that new project.

A number of existing offshore wind farm projects (established through earlier lease rounds pre-dating Lease Round 4) will be impacted as a result of the wakes introduced by Lease Round 4 projects (including the Outer Dowsing Project). The Ørsted IPs are of the view that full mitigation for the wake effect introduced by the Outer Dowsing Project, and by other Lease Round 4 projects, should be properly secured by including the protective provisions proposed in the Ørsted IPs' most recent submission (Appendix 1 of [C1-003]) within the DCO. Full mitigation for Lease Round 4 offshore wind farm projects, against the wake impacts introduced by future projects that will be leased through future leasing rounds, can likewise be secured by including similar protective provisions in future DCOs, and/or by The Crown Estate including appropriate clauses within future Agreements for Lease."

8. The Applicant has argued throughout against the proposed protective provisions. In its most recent relevant submissions (made to the Secretary of State in response to consultation) it stated:

"*The requirement for financial compensation under the protective provisions*

22. The Ørsted IPs and the Equinor IPs continue to assert that this matter should be dealt with by way of protective provisions which require a financial compensation payment to be made by the Applicant to each of the respective Interested Parties. As summarised in paragraph 10 of the Applicant's Submissions on Wake Loss Matters (REP6-120), there is no basis in law, policy, precedent or evidence for the requested payment provisions. Whilst the precise drafting of these provisions has been amended in their latest iteration, the principle remains that there is no basis for provisions requiring payment and no justification has been provided for the continued inclusion of these provisions.

23. The Applicant highlights that, since the conclusion of the Examination, the Government has published draft updated National Policy Statements, which make particular provision for the matter of wake effects. Paragraph 2.8.233 of draft NPS EN-3 states "there is no expectation that wake effects can be wholly removed between developments, or that inter-project compensation arrangements are a necessary means to mitigate the impact of wake effects, although developers may opt to take such approaches outside of the planning

process." That draft statement of policy reflects the point made on behalf of the Applicant at Deadline 6 that the payment of commercial compensation by one operator to another in this way is not a planning matter. That basic point of principle does not change (or disappear) simply because the suggested provision takes the form of a draft protective provision rather than a requirement. The legal effect is the same, and the issue is one of substance, not form.

24. The Ørsted IPs' and the Equinor IPs' proposed protective provisions are not supported either by the extant NPSs or the emerging draft policy. No justification has been advanced for their inclusion here that could rationally be relied upon by the SoS for the purposes of decision-making.

The Ørsted IPs' and the Equinor IPs' justification for the submission of the updated protective provisions

25. The only purported justification advanced by the Ørsted IPs and the Equinor IPs for the updated set of protective provisions is "alignment" and a "consistent approach" between the Project and the Dogger Bank South Offshore Wind Farm. That purported 'justification' is wholly misconceived for the following reasons:

a. the imposition of these protective provisions has been robustly resisted by the applicant in the Dogger Bank South case, describing them as "unworkable and unreasonable"; and

b. the policy tests in paragraph 4.1.16 of NPS EN-1 require restrictions to be "related to the development". The fact that similar provisions have been proposed by an Interested Party on another development, but neither accepted as appropriate by the applicant in that case or ultimately determined by the SoS to be appropriate, offers no sensible rationale for the imposition of protective provisions on the DCO for the Project where no project-specific justification for their inclusion has been made out.

The Ørsted IPs' and the Equinor IPs' justification for the mechanism proposed in the updated protective provisions

26. The Ørsted IPs and the Equinor IPs state that the protective provisions put forward would enable the Applicant and the Ørsted IPs/Equinor IPs (as appropriate) to control the procedure to be followed.

27. This is not reflected in the drafting. The practical effect of the drafting of the protective provisions would be that installation of the Project's turbines cannot take place unless the Wake Loss Mitigation Scheme is agreed or determined and security is provided for the undertaker's liabilities under the Wake Loss Mitigation Scheme. In the event that the Ørsted IPs/Equinor IPs and the Applicant disagree on any element of the Wake Loss Mitigation Scheme, the Applicant would be

compelled to seek the appointment of an expert under paragraph 4(3). Even at that stage, in order to proceed, the parties would be required to agree the appointment of the expert. There would be no compelling event that would require the Ørsted IPs/Equinor IPs to act reasonably or reach a compromise if there was any disagreement as to the identity or terms of appointment of the expert. By contrast, the Applicant would in the meantime likely be suffering considerable additional cost and delay (both of which are contrary to the established public interest in the rapid deployment of renewable energy generating capacity and in lowering the cost of energy). The procedure to be followed under the draft protective provisions would be in the sole control of the Ørsted IPs/Equinor IPs.

28. It would be patently unreasonable and contrary both to the public interest and to key tenets of national policy that the progress of a project which is Critical National Priority infrastructure, and for which there is an urgent need and a clear public interest, rests entirely in the control of a commercial rival. "

9. The Applicant went on to set out a rebuttal of the position adopted by the Equinor and Ørsted IPs in their written submissions, and to resist the suggestion of the imposition of a requirement to address wake loss matters.

10. The Secretary of State has now invited comments in respect of the Applicant's submissions.

Previous decision-making in DCOs relating to wake loss

11. Those instructing me refer to four decided DCO applications:

    a. Awel y Mor Offshore Wind Farm, where a requirement was included in the DCO;

    b. Mona Offshore Wind Farm, where a requirement was included in the DCO and it has been reported that an agreement has been reached between the relevant applicant and the affected parties;

    c. Morgan Offshore Wind Farm, where it has been reported that an agreement has been reached between the relevant applicant and the affected parties and a requirement was not imposed because that agreement was reached prior to the DCO decision; and

d. Morecambe Offshore Wind Farm, where the relevant applicant engaged with the affected parties and submitted an agreed form of requirement to the Secretary of State's consultation. This was included in the relevant DCO.

12. In the Awel y Mor decision, the Secretary of State gave the matter of wake loss "moderate" adverse weight in the planning balance. The requirement imposed there was:

> "**Wake effects**
>
> 25.—(1) No part of any wind turbine generator shall be erected as part of the authorised development until an assessment of any wake effects and subsequent design provisions to mitigate any such identified effects as far as possible has been submitted to and approved in writing by the Secretary of State, in order to mitigate the impact of the authorised development on the energy generation of Rhyl Flats Wind Farm. The assessment must be based on the scope of this Order as granted.
>
> (2) The authorised development shall be carried out in accordance with the approved details."

13. I note that wake loss is an issue in other DCOs. In respect of the Dogger Bank South Offshore Windfarm, I have previously advised the statutory undertakers in respect of the Dogger Bank A, B and C offshore windfarms in respect of wake loss matters, and my advice has been submitted to the Secretary of State[1] and made available directly to the Equinor and Ørsted IPs.

Policy

14. NPS EN-3 (2024) does not expressly address wake loss but provides:

> "2.8.342 Where a proposed offshore wind farm potentially affects other offshore infrastructure or activity, a pragmatic approach should be employed by the Secretary of State.
>
> 2.8.343 Much of this infrastructure is important to other offshore industries as is its contribution to the UK economy.

[1] It has also been published on the project website: EN010125-002562-C1-022 - Projco IPs - 6 December 2025(716256553.1).pdf

2.8.344 In such circumstances, the Secretary of State should expect the applicant to work with the impacted sector to minimise negative impacts and reduce risks to as low as reasonably practicable.

2.8.345 As such, the Secretary of State should be satisfied that the site selection and site design of a proposed offshore wind farm and offshore transmission has been made with a view to avoiding or minimising disruption or economic loss or any adverse effect on safety to other offshore industries…

2.8.347 Where a proposed development is likely to affect the future viability or safety of an existing or approved/licensed offshore infrastructure or activity, the Secretary of State should give these adverse effects substantial weight in its decision-making.

2.8.348 Providing proposed schemes have been carefully designed, and that the necessary consultation with relevant bodies and stakeholders has been undertaken at an early stage, mitigation measures may be possible to negate or reduce effects on other offshore infrastructure or operations to a level sufficient to enable the Secretary of State to grant consent."

15. The draft revisions to EN-3 would include express provision in respect of wake effects. In particular, it is proposed to include the following wording (paragraph 2.8.233):

> "Disputes around compensation for wake effects are regarded to be a commercial matter to be managed between disputing developers. The planning system will not adjudicate on matters of compensation for wake loss."

Instructions

16. I am asked to consider:

a. The principles of consistent decision making in terms of the substantive issue and how that should be interpreted by the Secretary of State on the ODOW project in light of other recent decisions and further whether the inclusion of a requirement on previous DCOs precludes the ability of the Secretary of State to incorporate protective provisions in this case;

b. The interpretation of the current NPS (which ODOW must be determined in accordance with) and the draft NPS (which is a material consideration for ODOW) in respect of the imposition of measures to secure compensation through protective provisions to the DCO for ODOW. In particular, my comments are sought on:

i. the requirement for compensation if the Secretary of State adopts the Equinor IPs' and Ørsted IPs' position that ODOW is likely to affect the future viability of the seven windfarms such that the policy test in Para 2.8.347 is engaged; and

ii. alternatively, if the Secretary of State accepts the position of the Applicant that the impacts do not reach the threshold of "affecting the future viability" of any project, then notwithstanding that significant weight shall not then be applied to such impacts whether it is still appropriate for compensation to be secured applying the usual principles of the mitigation hierarchy; and

iii. paragraph 2.8.233 of the draft EN-3 and whether this precludes mitigation of economic loss through compensation on the face of the DCO.

c. Whether the protective provisions can be included in the DCO for ODOW to address the impacts of wake loss on the seven windfarms, including the lawfulness of this approach and addressing questions of precedent;

d. If protective provisions can be included in the DCO for ODOW, whether this is justified in the circumstances of ODOW;

e. Whether the issue would be better addressed by protective provisions as opposed to a requirement; and

f. Whether I agree with the analysis in the Ørsted IPs submissions in response to the earlier consultations.

Analysis

Consistency

17. It is a well-established principle of planning law that like cases should be decided in a like manner. Consistency does not, however, require the same decision to be made. Rather, if it is proposed to take a different approach it is necessary to have regard to the principle of consistency and to explain why it is proposed to take a different approach. The principle was first explained by Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P&CR 137, and

has been reaffirmed on multiple occasions since: see e.g. the Court of Appeal in *DLA Delivery Ltd v Baroness Cumberlege of Newick* [2018] PTSR 2063.

18. In the case of wake loss, it seems to me that there is a strong case for the Secretary of State taking a consistent approach to cases decided under the same policy framework when this issue arises. This includes the weight to be given to a particular issue. To the extent that different approaches are taken, the Secretary of State should nonetheless (a) consider the principle of consistency and (b) explain why an earlier decision has not been followed. On the facts here, a consistent approach would appear to lead to incorporating provisions in the DCO to address the issue. There does not seem to be any reason to not deal with the issue here, when it has been addressed elsewhere.

Interpretation of policy

19. The critical question here is the extent to which the NPS either requires or permits the consideration of compensation for wake loss. In my opinion, on a proper construction of the policy, the NPS indicates that compensation may be required, but does not require it in all cases. I reach that view for the following short reasons:

    a. In demonstrating compliance with the NPS, the mitigation hierarchy should be applied (2.1.4).

    b. The applicant is expected to minimise negative impacts on other projects (2.8.344), which may include negative economic impacts from wake loss.

    c. The Secretary of State should be satisfied that the site selection and site design has been made with a view to avoiding or minimising economic loss (2.8.345).

    d. Any residual effects on future viability of other projects should be given substantial weight (2.8.347).

20. Given the weight to be given to future viability of other projects, and the express requirements to seek to avoid or minimise economic loss, in my view it is clear that compensation for economic loss *may* be required in any particular case.

21. As a matter of principle, addressing economic impacts and securing compensation is consistent with the the normal operation of the development consent system. Whilst economic viability may often be irrelevant in the planning system, it is clearly capable of being a material consideration: see e.g. *R (Sainsbury's Supermarkets Ltd) v Wolverhampton City Council* [2011] 1 AC 437,

paragraph 59. Impacts on viability of other schemes may, in particular, be relevant where those impacts will have adverse planning consequences. A good example of this is the retail impact test in the NPPF, where it is necessary to consider the impact of some proposals on existing and future investment in existing town centres. In the offshore wind context, if the effect of consenting one wind farm was to prevent the delivery of another, then this would in my view be an obviously material planning consideration (not least because any benefit of delivering the second would have to be offset by the disbenefit of losing the first wind farm).

22. Further, in the context of an NPS which is relevant to a decision to grant development consent, and not solely planning permission, there is an obvious relevance of matters of compensation since a DCO will routinely include provisions to acquire land or rights. This often includes provisions to grant statutory authority to interfere with rights or cause nuisance, coupled with provisions to ensure that compensation is payable in cases where such matters could no longer be enforced under private law. Whilst the quantum of compensation is not fixed in DCOs, they invariably make provision for the application of compensation provisions, thus ensuring that the measures are compatible with both common law principles and Article 1 of the First Protocol to the ECHR. I return to these principles below.

23. For those reasons, I do not think that proposed paragraph 2.8.233 of draft EN-3 should be read as precluding mitigation of economic loss through compensation, since that would make an assumption that those losses were irrelevant for planning purposes (which they may not be); and would make an assumption that compensation for losses is not part of the framing of the DCO (which it invariably is).

Requirement for compensation

24. The starting point as to whether there is a requirement for compensation is the absence of a clear route to the recovery of financial losses from wake loss under the general law if the new wind farm did not benefit from statutory authority. Absent specific provisions in the DCO, it is unclear whether the authorisation granted by the DCO would result in any or any adequate compensation being achieved. Simply saying, as the draft NPS does, that it is a matter to be managed between disputing developers suggests that there is some way in which that dispute can be managed and adjudicated upon. For present purposes it is unnecessary to seek to resolve this question, and it seems to me unlikely that it could be resolved definitively without a ruling by the appellate courts.

25. The particular problem with this uncertainty is that it means that the Secretary of State cannot make assumptions about how wake loss issues will ultimately affect each relevant development, and therefore whether they amount to a good reason to withhold development consent for the project under consideration. Put another way, if no provision is made in the ODOW DCO, the Secretary of State does not know whether and to what extent the Applicant and the Equinor and Ørsted IPs will be able to resolve matters by commercial agreement, and what impact this will have on the future financial viability of each respective project.

26. The Secretary of State cannot assume that compensation will be recovered to address any impacts on viability, and thus cannot assume whether particular projects will be delayed or diminished as a result of wake effects from the scheme under consideration.

27. It follows that in my view there is a clear case for expressly addressing compensation for wake loss in the DCO. This will allow the Secretary of State to conclude that those effects *can* be addressed such that an impact on viability of other projects is avoided. Without such a provision, it is unclear how a conclusion can be reached either way on the policy question of whether the development of ODOW will be likely to affect the future viability of the seven wind farms, and thus whether there is a matter which should be given "substantial weight" in the decision-making process.

28. In assessing the consequences for the viability of other projects, the Secretary of State must have regard to the terms on which development consent would be granted, but also the consequences of granting development consent without provision for the payment of compensation for losses.

29. If it is accepted, as the Equinor and Ørsted IPs suggest, that there will be an impact on the economic viability of the seven wind farms towards the end of their operational life such that they may be decommissioned early, then it seems clear that this is an effect on future viability. The provision of a compensation mechanism is capable of addressing the likely residual wake loss after all reasonable steps have been taken to avoid the losses through scheme design, therefore according with the mitigation hierarchy.

30. I would therefore summarise the position as follows:

    a. If no provision is made in the DCO the Secretary of State cannot assume that impacts on viability will be resolved by agreement between the parties;

b. Early decommissioning is an effect on future viability;

c. Assuming the Secretary of State accepts the Equinor and Ørsted IPs' case, then absent provision in the DCO, there is an effect on the future viability of the seven wind farm projects which can only be mitigated with certainty through provision in the DCO.

31. Whilst the future viability of the seven wind farms is a material consideration as a result of the terms of the EN-3, it seems to me that the same analysis could in principle apply to wake losses which do *not* reach that threshold of impacting viability. It is unclear why wake loss should be treated differently from any other effect in this context in that the Applicant and the Secretary of State should consider how such adverse impacts can be avoided or mitigated, and ultimately compensated for as necessary. Nonetheless it is clear that the policy threshold for giving "substantial weight" to economic impacts is an impact on future viability.

Requirement or protective provision

32. As I see it, the difficulty with a requirement is that it does not give clarity as to how these issues will ultimately be resolved. The Awel y Mor requirement does not resolve these matters, although it does impose a "check" on ensuring that the project does not proceed until they have been reconsidered. However, it neither secures nor excludes the payment of compensation.

33. There is a general question as to whether a requirement can secure the payment of compensation. Section 120(2) Planning Act 2008 states that requirements may *in particular* correspond to what could be imposed as a planning condition. A planning condition cannot require the payment of compensation: *DB Symmetry v Swindon BC* [2022] UKSC 33. However, the fact that a requirement *may* fulfil the role of a planning condition does not mean that all requirements must fulfil that role. Further, s 120(3) read with paragraph 36 of Part 1 of Schedule 5 makes clear that a development consent order may make provision for the payment of compensation, without providing how that should be secured. In my view, therefore, a requirement may require the payment of compensation.

34. It is however entirely clear that a protective provision secured by a DCO may require the payment of compensation or provide for an indemnity. This is a common form of drafting, and as the Equinor IPs have noted, it appears in other made DCOs.

35. A further advantage of a protective provision is that it can be enforced directly between the parties, without the need for enforcement action in respect of a breach of requirements by an enforcing authority. Protective provisions may also be modified through agreement. Should disputes arise, they can be resolved through any applicable arbitration provision without the Secretary of State's involvement.

36. In those circumstances, it seems to me that the desire (in the draft NPS) for such matters to be resolved between developers is better achieved by protective provisions, rather than through a requirement which will necessarily have to be determined and enforced by the enforcing authority.

37. I do not think that the absence of precedent for the use of protective provisions is a determinative, or even important, factor in deciding whether or not they should be imposed here. The facts are very specific. The issue of wake loss is under active consideration in a number of ongoing cases. There has not been any decision of the Secretary of State to date which has rejected the use of protective provisions, and which would therefore have to be distinguished.

38. Moreover, I think the examples in the Equinor IPs' position statement are good ones. The impacts on a train operating company of disruption to a railway line by a statutory undertaker, or the impacts on the fishing industry of construction activity for offshore wind farms, provide a helpful parallel since in neither case is there a clear-cut route to compensation under the statutory compensation code. In other words, they are circumstances where provision on the face of the DCO is appropriate to avoid either lengthy disputes, or worse still uncompensated interferences with the economic interests of others.

39. Finally, I have been asked to consider the Ørsted IPs' broader submissions in the context of investment in offshore wind, and the relationship with ongoing leasing of new locations for wind farms. Whilst these submissions go to the merits of the proposed protective provisions rather than to the legal tests to be applied, in my view the points raised are plainly material to the Secretary of State's determination of the ODOW application. The absence of clear basis upon which wake losses will be addressed inevitably creates uncertainty both for the ODOW project, and for others.

40. For the reasons I have set out above, I disagree with the Applicant's overarching assertion that the proposed protective provisions have "no basis in law, policy or precedent". The legal basis for securing compensation under a DCO is clear, being expressly one of the matters that can be provided for. As a matter of policy, EN-3

makes clear that economic impacts which affect future viability of other projects must be considered in deciding whether to grant development consent, and on what terms. In relation to precedent, there is precedent for securing compensation measures under protective provisions, and for addressing wake effects on the face of a DCO. There is no decision where a case for protective provisions in terms such as those now sought has been rejected.

Richard Turney KC

Landmark Chambers

17 December 2025