

MORGAN OFFSHORE WIND PROJECT: GENERATION ASSETS

Explanatory Memorandum

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Image of an offshore wind farm

MORGAN OFFSHORE WIND PROJECT: GENERATION ASSETS

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1 SUMMARY

- 1.1 This memorandum explains the purpose and effect of each article of, and Schedule to, the draft Morgan Offshore Wind Project: Generation Assets Order (the "Order"), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹ (the "APFP Regulations").
- 1.2 Regulation 5(2)(c) requires explanatory memoranda to explain "*the purpose and effect of provisions in the draft order*".

2 PURPOSE OF THE ORDER

- 2.1 Morgan Offshore Wind Limited (incorporated under company number 13497271 and having its registered office at Chertsey Road, Sunbury On Thames, Middlesex, United Kingdom, TW16 7BP) (the "undertaker") is applying to the Secretary of State for a development consent order (the "Application") for the construction, operation and decommissioning of an offshore wind power generating station (the "authorised development").
- 2.2 In summary, the authorised development is the development and associated development described in Part 1 (authorised development) of Schedule 1 of the Order and any other development authorised by the Order that is development within the meaning of section 32 of the 2008 Act. The authorised development comprises the Morgan Offshore Wind Project generation assets which will be located within the Morgan Array Area. This includes the wind turbine generators (WTGs) and foundations, offshore substation platforms (OSPs) and foundations, inter-array cables between the WTGs and the OSPs and inter-connector cables between the OSPs.
- 2.3 The Morgan Array Area is located wholly in English waters in the east Irish Sea, approximately 22km (12nm) from the Isle of Man and approximately 36km (19.6 nm) from the northwest coast of England.
- 2.4 A detailed description of the authorised development is included in the Project Description Chapter of the Environmental Statement (document reference F1.3).
- 2.5 A separate development consent order is being sought for the transmission assets required to convey the electricity generated by the WTG within the Morgan Array Area to shore and onwards to the existing National Grid substation at Penwortham, Lancashire. A separate application seeking consent for this infrastructure is being submitted jointly with Morecambe Offshore Wind Farm Limited pursuant to a direction issued by the Secretary of State on 4 October 2022 under section 35 of the Planning Act 2008. Both the Morgan Offshore Wind Project and the Morecambe Offshore Windfarm (the Projects)

¹ S.I. 2009/2264

were scoped into the 'Pathways to 2030' workstream under the Offshore Transmission Network Review (OTNR). The OTNR aims to consider, simplify, and wherever possible facilitate a collaborative approach to offshore wind projects connecting to the National Grid.

- 2.6 Under the OTNR, the National Grid Electricity System Operator (NGESO) is responsible for assessing options to improve the coordination of offshore wind generation connections and transmission networks and has undertaken a Holistic Network Design Review (HNDR). In July 2022, the UK Government published the 'Pathway to 2030 Holistic Network Design' documents, which set out the approach to connecting 50 GW of offshore wind to the National Grid (NGESO, 2022). A key output of the HNDR process was the conclusion that the Projects should work collaboratively in connecting their two wind farms to the National Grid electricity transmission network at Penwortham in Lancashire.

Nationally Significant Infrastructure Project

- 2.7 The authorised development is a nationally significant infrastructure project ("NSIP") within sections 14(1)(a), 15(3) and 15(4) of the 2008 Act. Under section 15(3) and (4) a generating station is an NSIP if:
- (a) it is an offshore generating station located in waters in or adjacent to England up to the seaward limit of the territorial sea or it is in a Renewable Energy Zone; and
 - (b) its capacity is more than 100 megawatts (MW).
- 2.8 The Renewable Energy Zone falls within the Exclusive Economic Zone designated under the Exclusive Economic Zone Order 2013² which extends up to 200nm from territorial waters. Morgan Offshore Wind Project will be located wholly in English offshore waters in the east Irish Sea approximately 37.13 km (20.1 nm) from the northwest coast of England and is therefore within the Renewable Energy Zone. Its capacity will be more than 100MW. Accordingly, it falls within sections 15(3) and (4).
- 2.9 As the authorised development is an NSIP, development consent must be obtained from the Secretary of State to authorise it, and an application for a development consent order must be made to the Secretary of State, care of the Planning Inspectorate, under section 37 of the 2008 Act.
- 2.10 Schedule 1 (Authorised Development) to the Order contains a list of numbered works comprising the authorised development.

² S.I. 2013/3161

Associated development

- 2.11 The draft Order specifically authorises development which is associated with the NSIP. The Secretary of State may, under the provisions of section 115(4A) of the Planning Act 2008, grant consent for development that is associated with an NSIP.
- 2.12 Guidance on associated development has been issued by the Secretary of State³. Paragraph 5 of the Department for Communities and Local Government (DCLG – now the Department for Levelling Up, Housing and Communities (DLUHC)) Guidance (“Guidance”) sets out core principles which must be taken into account by the Secretary of State when deciding whether or not development should be treated as associated development. In summary:
- (a) There should be *“a direct relationship between associated development and the principal development.”*
 - (b) *“Associated development should therefore either support the construction or operation of the principal development, or help address its impacts.”*
 - (c) *“Associated development should not be an aim in itself but should be subordinate to the principal development.”*
- 2.13 In most cases therefore associated development will be *“typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project”* (paragraph 6).
- 2.14 In addition, the core principles in paragraph 5 of the Guidance also states that *“Associated development should be proportionate to the nature and scale of the principal development.”*
- 2.15 Details of associated development are set out in Part 1 of Schedule 1 of the Order and include offshore activities such as scour protection around the foundations of the offshore structures and cable protection measures. Scour protection is necessary to maintain the structural integrity of the foundations of offshore structures and cable protection reduces the risk of damage to cables and is necessary to ensure the safety of other users of the sea. Scour protection and cable protection measures are therefore typically brought forward alongside offshore generating stations and are both necessary and proportionate in nature and scale to the principal development.

³ ‘Guidance on associated development applications for major infrastructure projects’ (Department for Communities and Local Government) (April 2013) (the DCLG Guidance)

3 ANCILLARY WORKS

- 3.1 The Order also authorises ancillary works within the Order limits. These are works that do not constitute development but are required to facilitate the construction of the authorised development.
- 3.2 Details of ancillary works are set out in Part 2 of Schedule 1 and include activities such as temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development.

4 THE DRAFT ORDER

- 4.1 The purpose and effect of the provisions of the Order are explained below in sequence. The Order is based on the model provisions set out in Schedule 1 to the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the “Model Provisions”) as well as relevant precedents. Whilst the Model Provisions have been repealed, Planning Inspectorate Advice Note 13 ‘Preparing the draft Order and Explanatory Memorandum, February 2019’ explains that they were intended as a guide for developers in drafting orders, rather than a rigid structure, but aided consistency and assisted in drafting a comprehensive set of lawful provisions.
- 4.2 A marine licence is required before carrying out any licensable marine activities under the Marine and Coastal Access Act 2009. The Order includes two marine licences which will be deemed under the Order at Schedules 3 and 4.
- 4.3 The Order adopts the ‘Rochdale Envelope’ whereby the maximum permitted consent envelope is provided for and assessed, allowing some of the scheme detail to be approved post-consent. The approval of that detail is provided for within the Requirements in Schedule 2 Part 1 of the Order and the Conditions in each deemed marine licence.
- 4.4 The form of the Order has had regard to, comparable precedent orders. These are relevant for the Project for the reasons explained below and are referenced in the below sections as applicable to the specific drafting:

Order	SI Number	Comments
Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 (“SEP DEP DCO”)	S.I. 2024/564	This is the most recently consented offshore wind farm. This development has similar considerations with regards to offshore deemed marine licences.
Awel y Môr Offshore Wind Farm Order 2023 (“Awel y Môr”)	S.I.2023/1033	This is an offshore wind farm to be located in the Irish Sea (noting that this is in Welsh waters, whilst the authosed development would be in English waters). This development therefore has similar

		considerations with regards to constructing wind turbine generators, inter-array cables, offshore substation platforms and interconnector cables.
Hornsea Project Four Offshore Wind Farm Order 2023 ("Hornsea Four")	S.I. 2023/800	This is a recently consented offshore wind farm. This development has similar considerations with regards to constructing wind turbine generators, inter-array cables, offshore substation platforms and interconnector cables. It also has a deemed marine licence.
East Anglia Two Offshore Wind Farm Order 2022 ("East Anglia Two")	S.I. 2022/433	This is an offshore wind farm which is referenced to demonstrate the long-standing precedents (where applicable) for particular drafting. This development has similar considerations with regards to constructing wind turbine generators, inter-array cables, offshore substation platforms and interconnector cables and includes offshore deemed marine licences.
East Anglia One North Offshore Wind Farm Order 2022 ("East Anglia One North")	S.I. 2022/432	This is an offshore wind farm which is referenced to demonstrate the long-standing precedents (where applicable) for particular drafting. This development has similar considerations with regards to constructing wind turbine generators, inter-array cables, offshore substation platforms and interconnector cables and includes offshore deemed marine licences.
Norfolk Boreas Offshore Wind Farm Order 2021 ("Norfolk Boreas")	S.I. 2021/1414	This is an offshore wind farm which is referenced to demonstrate the long-standing precedents (where applicable) for particular drafting. This development has similar considerations with regards to constructing wind turbine generators, inter-array cables, offshore substation platforms and interconnector cables and includes offshore deemed marine licences.
Norfolk Vanguard Offshore Wind Farm Order 2020 ("Norfolk Vanguard")	S.I. 2020/706	This is an offshore wind farm which is referenced to demonstrate the long-standing precedents (where applicable) for particular drafting. This development has similar considerations with regards to constructing wind turbine generators, inter-array cables, offshore substation platforms and interconnector cables and includes offshore deemed marine licences.
<u>The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 ("Teesside A and B")</u>	<u>S.I. 2015/1592</u>	<u>This is an offshore wind farm which is referenced to demonstrate the long-standing precedents (where applicable) for particular drafting. This development has similar considerations with regards to constructing wind turbine generators, inter-array cables, offshore substation platforms</u>

		<u>and interconnector cables and includes offshore deemed marine licences</u>
<u>The Triton Knoll Offshore Wind Farm Order 2013 ("Triton Knoll")</u>	<u>S.I. 2013/134</u>	<u>This is an offshore wind farm which is referenced to demonstrate the long-standing precedents (where applicable) for particular drafting.</u>
<u>The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 ("Yorkshire Green")</u>	<u>S.I. 2024/393</u>	<u>This is a recently granted DCO that has been referred to for precedent drafting in connection with the extension of the time period to commence development where an action for judicial review is taken.</u>

Part 1 – Preliminary

Article 1 - Citation and commencement

- 4.5 Article 1 sets out the name of the Order and the date on which it comes into force.
- 4.6 This article did not appear in the Model Provisions. However, it is a standard article that is included in all development consent orders.

Article 2 - Interpretation

- 4.7 Article 2(1) defines the terms used in the Order. It is a standard article and was included in the Model Provisions as article 1.
- 4.8 Definitions to note include:
- (a) "Commence". The definition of "commence" is based on wording commonly used in other offshore wind farm orders, save that for this Order it only relates to the first carrying out of licensable activities as all parts of the authorised development will be carried out seaward of mean high water. The definition also specifies the licensable activities which, if undertaken, will not constitute "commencement". This means that certain specified activities can be carried out offshore prior to the conditions of the deemed marine licence being discharged.
 - (b) "Licence 1" and "licence 2". These definitions have been included to simplify and ensure clarity in relation to cross referencing to the two deemed marine licences within the DCO. "licence 1" means the marine licence set out in Schedule 3 (Deemed marine licence under the 2009 Act – Licence 1: Wind Turbine Generators and other Offshore Infrastructure) and licence 2" means the marine licence set out in Schedule 4 (Deemed marine licence under the 2009 Act – Licence 2: Offshore Substation Platforms and Interconnector Cables);

(c) "Maintain". A definition of "maintain" has been added to make clear what is authorised under article 6 (Power to maintain the authorised project), and that this does not permit the undertaker to depart from the description of the authorised development in Schedule 1 or to carry out maintenance operations which would cause different environmental effects to those identified in the Environmental Statement ("ES"). The definition of maintain must be read in conjunction with:

(i) article 6, which makes clear that the power to maintain does not relieve the undertaker of any requirement to obtain any further licence for any works not covered by the deemed marine licences; and

condition 13 of licence 1 and licence 2, which specifies the types of maintenance works that are covered by each licence and links the carrying out of any maintenance works to the offshore operations and maintenance plan (OOMP) to be approved by the Marine Management Organisation ("MMO"). The OOMP also identifies where a maintenance activity may require a further marine licence in the future.

(d) "Order limits" which means the red line boundary for authorised development as shown on the offshore order limits and grid coordinates plan.

(e) "scheduled works" which means numbered works specified in Part 1 of Schedule 1 (authorised development) to this Order, or any part of them;

(f) The "undertaker" is defined as Morgan Offshore Wind Limited who has the benefit of the provisions of the Order.

4.9 Articles 2(2) and 2(3) define measurements as approximate. The purpose of this is to ensure that if upon construction of the works it transpires that the distances are marginally different to those listed in the Order, there is no issue over whether the Order permits the works. Thus this provision allows for a small tolerance, although all works can only take place within the Order limits. It is now common practice to include such provision in development consent orders; the Model Provisions included similar wording in article 1(3) and similar wording is used in Hornsea Four, Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two, Awel y Môr and SEP and DEP.

4.10 Article 2(4) confirms that references to works are to the works numbered in Schedule 1.

Part 2 Principal Powers

Article 3 – Development consent etc. granted by the Order

- 4.11 Article 3 provides the principal power to construct and operate the authorised development described in Part 1 of Schedule 1 and ancillary works described in Part 1 and Part 2 of Schedule 1 within the Order limits. Together the authorised development and ancillary works form the authorised project.
- 4.12 Development consent is subject to the provisions of the Order, including the requirements listed in Schedule 2 and the conditions contained within licence 1 and licence 2 and therefore all the relevant management plans secured through either the requirements or the conditions. This is based on article 2 of the Model Provisions, with the only substantive difference being that model article does not refer to consent being granted for ancillary works, which is the approach that is now taken in other offshore wind development consent orders including Hornsea Four, Norfolk Vanguard, Norfolk Boreas, East Anglia One North, East Anglia Two, Awel y Môr and SEP and DEP.

Article 4 – Operation of generating station

- 4.13 Article 4 provides authorisation for the undertaker to operate the authorised development as a generating station.
- 4.14 Article 4(2) provides that grant of development consent does not relieve the undertaker of the need to obtain any other necessary consents to operate the authorised development. This clarifies that the operator will still require to obtain, for example, an electricity generation licence under the Electricity Act 1989. A list of the other consents and licences anticipated to be required is set out in the Other Consents or Licences Required (document reference B5). The Planning Act 2008 confirms this can be included in the Order.
- 4.15 This article is included as standard in other development consents for offshore generating stations including Hornsea Four, Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two, Awel y Môr and SEP and DEP.

Article 5 – Deemed marine licences under the 2009 Act

- 4.16 Article 5 is the provision under which the marine licences in Schedules 3 and 4 are deemed granted.

Article 6 – Power to maintain the authorised project

- 4.17 This article provides the undertaker with a general power to maintain the authorised project, subject to any contradictory provisions in the Order. As at the application stage, it is not possible to identify or define the precise scope of maintenance activities, “maintain” is defined in Article 2 by reference to activities that do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement. The word “materially” gives a limited degree of flexibility, but

would not authorise any activities that would give rise to new or different significant effects.

- 4.18 This provision follows Model Provision 3 and precedent offshore wind orders including article 4 of Hornsea Four, article 5 in Norfolk Boreas and Norfolk Vanguard and article 4 East Anglia One North and East Anglia Two, article 5 of Awel y Môr and article 4 of SEP and DEP.

Article 7 - Benefit of the Order

- 4.19 This article allows the benefit of the Order to be transferred or leased to others by the undertaker. Save that in respect of licence 1 and licence 2, paragraph (3) of this article only provides for each deemed marine licence to be transferred or leased as a whole. There is recent precedent in Hornsea Four, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two for removing the ability to transfer part of a deemed marine licence.
- 4.20 This article is necessary to allow the undertaker commercial freedom to sell or lease the authorised development while ensuring that the Secretary of State can control such sale or lease through the need to obtain their consent. Without the ability to transfer the benefit, no party but the undertaker could operate the power station without committing a criminal offence. This article is therefore necessary to ensure that the authorised development is fundable and could be sold or leased in the future, while the Secretary of State retains the ability to approve any transfer or lease.
- 4.21 Paragraphs (1) and (2) are based on article 4 of the Model Provisions, amended to clarify that they are subject to paragraph (5) and that it is the undertaker that benefits from the provisions of the Order, rather than particular articles applying for the benefit of other specified parties as per the Model Provisions. The exercise of any transferred benefits or rights is therefore subject to the same restrictions, liabilities and obligations as would apply under the Order if those benefits or rights were exercised by the undertaker. Paragraph (3) provides for the transfer of the whole of the deemed marine licences. The consent of the Secretary of State is required for a transfer or grant, except where it is made to specified categories of person (paragraph (6)). To enable this ability to transfer, Sections 72(7) and (8) of the Marine and Coastal Access Act 2009 are disapplied in paragraph (11). Notice must also be given in writing to the MMO before giving consent to transfer the benefit of provisions in licence 1 or licence 2 (paragraph (8)).
- 4.22 Paragraphs (4) and (5) were not included in the Model Provisions but has been included in recent offshore wind orders including Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two and Hornsea Four.

- 4.23 Paragraph (6) is based on article 5 of the Model Provisions. It differs in that it allows a transfer or grant to specified licence holders to take place without the Secretary of State's consent, on the basis that it is appropriate for those companies to be able to carry out those works. As these transfers are restricted to persons holding appropriate licences, such persons will already have been determined to be fit to operate such facilities.
- 4.24 Paragraphs (8) to (10) include a procedure to be adopted when making an application to the Secretary of State for consent and follows the approach included in Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two, Awel y Môr and Hornsea Four.

Article 8 - Abatement of works abandoned or decayed

- 4.25 This article is intended to make sure that the undertaker will not abandon or allow to fall into decay the scheduled works. It provides a power which enables the Secretary of State, following consultation with the undertaker, to serve notice on the undertaker requiring it, at its own expense, to remove or restore those works. Section 105 of the Energy Act 2004 makes provision for the Secretary of State being able to serve notice on the undertaker requiring it to submit a decommissioning programme for approval. The provisions of this article do not cut across this statutory provision but supplement it. It follows the approach in Hornsea Four, East Anglia Two and Norfolk Vanguard.

Article 9 - Saving provisions for Trinity House

- 4.26 This is a model provision for harbours and is commonly used in Orders for offshore wind farm turbine generating stations. It has, for example, most recently been included in Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two. It is intended to provide protection to Trinity House.

Article 10 - Crown rights

- 4.27 This article is not a model provision, but it reflects the terms of section 135 of the 2008 Act and is also precedented. It has been used in many made orders, including Hornsea Four, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two. It provides protection to the rights belonging to The Crown. The intention of the article is to protect the Crown in respect of its land and interests, both where it holds the land and where it is held by another person (such as a government department). It provides that nothing in the Order authorises the undertaker to interfere with any land or rights in that land where that interest belongs to His Majesty in right of the Crown and forms part of the Crown Estate, where it belongs to His Majesty in the right of the Crown but do not form part of the Crown Estate, or where it belongs to a government department or held in trust for His Majesty.

Article 11 – Certification of plans etc.

- 4.28 This article provides for various application plans and documents listed in Schedule 5 to be certified by the Secretary of State as true copies of those documents following the making of the Order. This is based on article 41 of the Model Provisions. However, the list has been moved to Schedule 5 as, with the inclusion of all parts of the Environmental Statement, it is of considerable length.

Article 12 – Service of notices

- 4.29 This article governs the service of notices required to be given under the Order. In particular it allows service by email with the consent of the recipient (paragraph (1)(c)).
- 4.30 This article was not included in the Model Provisions but is a sensible addition that has been included in similar orders for example, article 47 of Hornsea Four, article 43 of Norfolk Vanguard and Norfolk Boreas and article 45 of East Anglia One North and East Anglia Two.

5 SCHEDULES

Schedule 1 – Authorised development

- 5.1 Part 1 of Schedule 1 describes the authorised development, which is described in detail in the Project Description Chapter of the Environmental Statement (document reference F1.3).
- 5.2 The Schedule is split into different work numbers. Each of these work numbers represents a different part of the authorised development. This split of the authorised development between different work numbers is designed to enable the Order to refer to different parts of the authorised development by citing the relevant work number. The Works Numbers are divided in this manner to provide flexibility to accommodate any onward transfer of the offshore substation platforms (“OSPs”) and interconnector cables to an offshore transmission operator (“OFTO”) in due course (see further paragraph 6.3). A final decision on whether one or all of the OSPs and associated interconnector cables will be transferred to an OFTO as part of the offshore generation station’s transmission assets or whether those elements will remain part of the project’s generation assets alongside the wind turbine generators and inter-array cables will not be taken until a later date.
- 5.3 The ancillary works are set out in Part 2 of Schedule 1. The split between the authorised development and the ancillary works is to make distinctions between the ancillary works which do not form part of the authorised development for which development consent is needed, but which are required to be carried out to facilitate the authorised development. The ancillary works are works within the Order limits that fall within the scope of the work assessed by the environmental statement. These include temporary landing places, moorings or other means of accommodating vessels in the construction and maintenance

of the authorised development and buoys, beacons, fenders and other navigational warning or ship impact protection works.

Schedule 2 - Requirements

- 5.4 The requirements in Schedule 2 are the equivalent of planning conditions. They apply to the carrying out and operation of the authorised development and reflect the processes and procedures usually employed by the undertaker when implementing a project such as this.
- 5.5 The requirements have been drafted in line with Triton Knoll and other recently approved offshore generating station DCOs including Awel y Môr, Hornsea Four, Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two and SEP and DEP.
- 5.6 **Requirement 1 (Time Limits)** specifies the time limit for commencing the authorised development as being seven years from the date on which the Order comes into force. This was included in the Model Provisions as requirement 2.
- 5.7 A seven-year time limit to commence development is considered appropriate for the authorised development. The authorised development is of significant scale and complexity. It can take a large amount of time for a project of this type to move into the construction phase following grant of consent, as there are a number of factors that need to be in place. The Applicant may need to secure a Contract for Difference (CfD), which is the government's main mechanism for supporting low carbon electricity generation. There is no guarantee of the timing that the Applicant would obtain a CfD for the authorised development. In addition, due to the complexity and scale of the authorised development there can be long lead in times for equipment and services, particularly in the context of high global demand. As set out within paragraph 2.5 a separate development consent order is being sought for the transmission assets required to convey the electricity generated by the wind turbine generators within the Morgan Array Area to the UK Grid. There will be a need for the Applicant to co-ordinate the two consents, adding further complexity and further justifying a seven year period for commencement.
- 5.8 Whilst it is the Applicant's ambition to commence development well in advance of the timescales set out in this requirement, other offshore wind farm projects have failed at certain milestones, for example CfD, and have had to go through the process of redesign and go back out to the market. The Applicant does not know at this stage the particular commercial pressures it may face and requires flexibility to meet the constraints of the market at the time as the offshore wind market changes quickly and involves a number of pressures from different suppliers.

- 5.9 The seven-year time limit has been included in a number of offshore wind DCOs including Triton Knoll, Teesside A and B, Hornsea Four and SEP and DEP.
- 5.10 The seven year time limit would be subject to sub-paragraph (2) which replicates the provisions of Section 91(3B) of the Town and Country Planning Act 1990 whereby if proceedings are begun to challenge the validity of the grant of a planning permission the period before the end of which development is required to be begun is extended by one year. There is precedent for including wording to replicate Section 93(3B) in Yorkshire Green. It is considered to be appropriate to ensure that there is no risk of the DCO lapsing if challenge proceedings are drawn out.
- 5.11 Paragraph (1) of **Requirement 2 (Design Parameters)** requires the wind turbine generators to be located within the area shown on the works plans and paragraph (2) and Table 1 provide maximum parameters for the scheduled works to ensure that the authorised development is restricted to the maximum parameters assessed in the environmental statement. This includes a number of parameters to restrict the overall development which can be constructed and ensure the development does not result in impacts greater than those assessed in the environmental statement. For example, the maximum rotor swept area (RSA) acts as a control on the size and number of wind turbine generators which can be constructed. The maximum RSA is the combined swept path taken up by all wind turbine rotors within the Morgan Array Area and is calculated by multiplying the total number of wind turbines installed by the swept area of a single wind turbine for a specific rotor diameter. Whilst the Order secures a maximum rotor diameter of 320m, the Order does not allow for a maximum number of turbines (96 wind turbine generators) to be installed within a 320m rotor diameter because that would result in an exceedance of the maximum RSA specified in the Order.
- 5.12 **Requirement 3 (Aviation Safety)** impose restrictions on the operation of the authorised development in the interests of aviation safety and requires the undertaker to exhibit lights as required by the Air Navigation Order 2016 and/or determined necessary for aviation safety after consulting with the Defence Infrastructure Organisation Safeguarding and as directed by the Civil Aviation Authority. The undertaker must notify Defence Infrastructure Organisation Safeguarding regarding the construction of the scheme and its parameters at least 14 days prior to the commencement of the offshore works. Details within the notification must include the date of commencement of construction, expected date of any wind turbines generators being brought into use and the details of the height, latitude and longitude of the wind turbine generators and offshore substation platforms. The undertaker is required to operate the lights installed at the lowest permissible lighting intensity level.
- 5.13 **Requirement 4 (St Anne's and Lowther Hill Primary Surveillance Radar)** imposes restrictions on the operation of the authorised development in the interests of air defence

and air safety for military and civil airspace. The restrictions on operation will apply until the Secretary of State, having consulted with NATS (En-Route) Plc has confirmed in writing that appropriate mitigation will be implemented and maintained for the lifetime of the authorised project.

- 6 Requirement 5 (Decommissioning)** provides for a written offshore decommissioning programme to be submitted to the Secretary of State prior to the commencement of the scheduled works and replicates the wording used in numerous offshore generating station DCOs to date including Triton Knoll, Awel y Môr, East Anglia One North and East Anglia Two. This requirement operates in addition to the statutory requirements under the Energy Act 2004.
- 6.1 Requirement 6 (Requirement for written approval)** provides that all agreements and approvals required pursuant to the requirements in this Schedule whether given by the Secretary of State or another person must be given in writing. This requirement replicates the wording used in numerous orders including most recently Awel y Môr and Hornsea Four.
- 6.2 Requirement 7 (Amendments to approved details)** confirms that details approved pursuant to the requirements include any amendments that may subsequently be agreed or approved. This was included in the Model Provisions as requirement 37.

Schedules 3 and 4 – Deemed Marine Licences

- 6.3** Licence 1 authorises licensed marine activities in relation to the wind turbine generators, inter-array cables, the offshore substation platforms and interconnector cables. Licence 2 authorises licensed marine activities in relation to the OSPs and interconnector cables. A final decision on whether one or all of the offshore substation platforms and associated interconnector cables will be transferred to an offshore transmission operator (“OFTO”) as part of the offshore generation station’s transmission assets or whether those elements will remain part of the project’s generation assets alongside the wind turbine generators and inter-array cables will not be taken until nearer the time. East Anglia One North and East Anglia Two are recent precedents for including offshore infrastructure within two deemed marine licences contained within the same DCO. East Anglia One North and East Anglia Two include platforms and inter-link platforms within their generation assets deemed marine licence and their transmission asset deemed marine licence. This approach retains the necessary flexibility for the projects and ensures there is a separate licence which can be transferred to the OFTO, as appropriate, when the decision has been taken. As with the approach taken for East Anglia One North and East Anglia Two, licence 1 and licence 2 include appropriate restrictions within the design parameters’ conditions to ensure that the inclusion of infrastructure in both cannot be

interpreted as authorising construction of double the number of offshore substation platforms or double the length of interconnector cables.

- 6.4 Both licence 1 and licence 2 are deliberately drafted so that each licence can be read independently of the rest of the Order and follows the approach taken on numerous offshore generating station DCOs including most recently Hornsea Four, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two.
- 6.5 The structure of both licences (including the numbering of paragraphs and conditions) is broadly the same as follows.

Part 1 – Licensed Marine Activities

- 6.6 Paragraph 1 (Interpretation) provides interpretation of certain words and phrases used in each licence. Many of which are identical to the main Order or have been amended to make sense in the context of each standalone marine licence.
- 6.7 Paragraphs 2 to 4 (Details of licensed marine activities) sets out a description of the licensed activities by reference to the relevant Work Nos. to which they relate and the substances and objects authorised for deposit at sea.
- 6.8 Paragraph 5 sets out the grid coordinates for those works within each deemed marine licence.
- 6.9 Paragraph 6 confirms that licence 1 and licence 2 will remain in force until the authorised scheme has been decommissioned.
- 6.10 Paragraph 7 confirms that section 72(7) and (8) (Variation, suspension, revocation and transfer) of the 2009 Act does not apply to a transfer of either licence 1 or licence 2 falling within article 7 (Benefit of the Order). Section 72(7) permits the licensing authority to transfer a marine licence to another person. Section 72(8) provides that "a licence may not be transferred except in accordance with subsection 7". Article 7 (Benefit of the Order) however provides for a transfer to take place in a different way to section 72(7). Since article 7 is different from the precise wording of section 72(7) of the 2009 Act it is necessary to specify that section 72(7) only applies to a transfer not falling within article 7 in order to enable article 7 to operate. Without specifying this, article 7 might be claimed to be inoperative because of adopting a different wording from section 72(7).
- 6.11 Paragraph 8 confirms that where any condition requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under the relevant licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved by the MMO. Paragraph 9 further confirms that any amendments to approved details must be in accordance with the principles and assessments set out in the Environmental Statement. Approval by the MMO of any

amendment or variation may only be given where it has been demonstrated to the satisfaction of the MMO that it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Part 2 – Conditions

- 6.12 Conditions 10 to 12 (Design parameters) specify the design parameters associated with the works comprised within the authorised scheme relevant to each deemed marine licence. This largely replicates the design parameters in the requirements but also includes some additional drafting in conditions 2 to 5, not included in Schedule 2 of the Order. This is to ensure it is clear that where infrastructure is included in both licence 1 and licence 2, the undertaker is not authorised to construct that infrastructure under both licences (ie double the amount), only the total parameters specified in Condition 10 and table 2.
- 6.13 Condition 13 (Maintenance of the authorised scheme) provides that the undertaker may maintain the authorised scheme except where the deemed marine licences provide otherwise and sets out what maintenance works are. No maintenance works can take place until an OOMP has submitted to the MMO for approval in writing at least four months prior to commencement of the operation of the licenced activities and approved by them. The OOMP must also be submitted for review and resubmission every three years during the operational phase. This condition together with the OOMP enables the Applicant and the MMO to properly manage and control future maintenance activities including identifying where a maintenance activity may require a further marine licence in the future.
- 6.14 Condition 14 (Extension of time periods) confirms that any time periods given in the licence may be extended with the agreement of the other party, but that such agreement cannot be unreasonably withheld or delayed.
- 6.15 Condition 15 (Notifications and inspections) provides for a system of supplying copies of the licence and other notices to agents and contractors, restricting the use of contractors and vessels to those notified to the MMO and where appropriate the Maritime and Coastguard Agency (“MCA”), Trinity House, United Kingdom Hydrographic Office and/or the Kingfisher Information Service of Seafish, mariners and regional fisheries contacts and publicising commencement and progress of the licensed activities.
- 6.16 Condition 16 (Aids to navigation) provide for various matters to aid navigation in the vicinity of the authorised scheme, including the provision of various navigation aids; the ongoing availability of the aids to navigation; and notification of the progress of works to Trinity House and the MMO and a procedure to be followed where an aid to navigation fails.

- 6.17 Condition 17 (Colouring of structures) specifies the colours which structures must be painted.
- 6.18 Condition 18 (Chemicals, drilling and debris) restricts the use of chemicals and other substances and provides for the disposal of certain drilling arisings and the monitoring of construction materials so as to identify those which may accidentally fall into the sea, which shall then be investigated and, where identified, recovered. This provision also deals with how the undertaker is to deal with any oil, fuel or chemical spills. It sets the standards that must be met by the undertaker in relation to the chemicals and other substances that can be used, ensuring that all materials are suitable for the marine environment.
- 6.19 Condition 19 (Force majeure) provides for the notification of deposits made in an emergency within or outside of the Order limits. The full details of the circumstances of the deposit must be provided by the undertaker to the MMO within 48 hours.
- 6.20 Condition 20 (Pre-construction plans and documentation) provides for the submission for approval, before the commencement of licensed activities, of
- (a) a design plan showing the proposed location (subject to up to 125m micro-siting in all directions), dimensions and choice of foundation of all elements of the authorised scheme to ensure that the licensed activities conform with the description of the works and the design parameters specified within the conditions.
- It also provides for submission and approval of the following:
- (b) a construction programme;
 - (c) a monitoring plan;
 - (d) an offshore construction method statement to include details of cable specification installation and monitoring, scour protection and cable protection management, foundation installation methodology, piling methodology (in the event that driven or part-driven pile foundations are proposed to be used), contractors, associated ancillary works and guard vessels to be employed;
 - (e) an offshore environmental management plan to include details of a marine pollution contingency plan, a chemical risk assessment, waste management and disposal arrangements, appointment and responsibilities of a fisheries liaison officer, a fisheries liaison and coexistence plan, measures to minimise disturbance to marine mammals and rafting birds from transiting vessels and measures to minimise the spread of invasive non-native species;

- (f) an offshore written scheme of investigation for archaeology and protocol for archaeological discoveries;
 - (g) an aids to navigation management plan to specify and manage compliance with the requirements of condition 18;
 - (h) a marine mammal mitigation protocol where driven or part-driven pile foundations are used or in the event that unexploded ordnance clearance ("UXO") is required; and
 - (i) a vessel traffic management plan.
- 6.21 In most cases outline or in-principle versions of these schemes and plans have been submitted with the DCO application and the versions of these documents that are submitted for approval will need to be in accordance with the outline or in principle plan or scheme.
- 6.22 Condition 21 requires each plan, protocol or scheme required to be approved under condition 20 to be submitted at least four months prior to commencement of the licensed activities (unless otherwise agreed with the MMO), for those submitted plans, protocols and schemes to be approved by the MMO within four months of the date of application (unless otherwise agreed) and for licensed activities to be carried out in accordance with the approved details.
- 6.23 Condition 22 (Underwater sound management strategy) requires submission and approval of an underwater sound management strategy, which must be in accordance with the outline underwater sound management strategy before commencement of any piling activities or UXO clearance.
- 6.24 Condition 23 (UXO clearance) requires the submission and approval of a method statement for unexploded ordnance clearance and a marine mammal mitigation protocol for the clearance of UXO before any clearance activities are undertaken. It further requires details of clearance activities to be provided to the MMO prior to and after UXO clearance takes place. The method statement for UXO clearance must include methodologies for identification and investigation of potential UXO targets, clearance of UXO and removal and disposal of large debris, a plan showing the clearance activities, a programme of works and any exclusion zones. A marine mammal mitigation protocol must also be provided.
- 6.25 Condition 24 (Marine noise registry) requires the undertaker to submit information compliant with the Marine noise registry requirements to the MMO in relation to driven or part-driven pile foundation works and UXO clearance works.

- 6.26 Condition 25 (Offshore safety management) states that no part of the authorised scheme may commence until the MMO has confirmed that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate contained within MGN654 and its annexes.
- 6.27 Condition 26 (Reporting of engaged agents, contractors and vessels) requires the undertaker to provide to the MMO details of agents and contractors engaged to carry out the licensed activities no less than 24 hours before the commencement of the licenced marine activity, and a weekly update as to which vessels are being used during construction. The notification must include the master's name, vessel type, vessel IMO number and the vessel owner or operating company.
- 6.28 Condition 27 (Pre-construction monitoring and surveys) specifies the manner in which the undertaker shall discharge its obligation under Condition 22 to put forward proposals for pre-construction surveys/monitoring and provides an indicative list of the expected pre-construction surveys. The survey proposals must be in accordance with the principles set out in the offshore in-principle monitoring plan and must specify each survey's objectives. The baseline report proposals must ensure that the outcome of the agreed surveys are drawn together to present a valid statement of the pre-construction position.
- 6.29 Condition 28 (Construction monitoring) specifies the manner in which the undertaker shall discharge its obligation under Condition 22 to put forward proposals for construction surveys/monitoring, and specifically requires certain underwater sound monitoring. It provides for the MMO to review sound monitoring results in comparison to those predicted in the environmental statement.
- 6.30 Condition 29 (Post-construction monitoring) specifies the manner in which the undertaker shall discharge its obligation under Condition 22 to put forward and carry out its proposals for post-construction surveys/monitoring and provides an indicative list of the expected post-construction surveys. Post-construction monitoring methodologies, timings, proposed format and content must be submitted for approval in writing to the MMO. Each proposal should explain how it will assist in informing a useful and valid comparison with the pre-construction position and/ or will enable the validation or otherwise of the key predictions in the environmental statement.
- 6.31 Condition 30 (Reporting of scour and cable protection) provides for the undertaker to give details of the location and volume of scour and cable protection within four months following completion of construction. The report should include the location and volume of the cable protection and scour protection.
- 6.32 Condition 31 (Completion of construction) requires the submission of a close out report (confirming the date of completion of construction and final as built details of the installed wind turbine generators, offshore substation platforms and cables as appropriate) to the

MMO, MCA, Trinity House, UKHO and relevant statutory nature conservation bodies within four months of completion of construction. The condition prohibits construction activities following completion of construction. The close-out report must include details such as the final number of installed wind turbine generators, installed wind turbine generator parameters, as built plans, the latitude and longitude coordinates of the centre point of the location of each wind turbine generator and offshore substation platform and the latitude and longitude coordinates of the inter-array and interconnector cables.

- 6.33 Condition 32 (Requirement for written approval) requires any agreement or approvals given by the MMO in relation to the conditions to be given in writing.

Schedule 5 – Documents to be certified

- 6.34 This schedule lists the documents and plans to be certified under article 11 (Certification of plans etc.) by the Secretary of State as true copies of those documents following the making of the order.